



# OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

## Finance, Taxation, and Economic Development Committee Report



Issued July 1, 2017

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### OCMC Concluding Reports Series

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*Final Report Part 2: Commission Recommendations*

*Report of the Bill of Rights and Voting Committee*

*Report of the Constitutional Revision and Updating Committee*

*Report of the Education, Public Institutions, and Local Government Committee*

***Report of the Finance, Taxation, and Economic Development Committee***

*Report of the Judicial Branch and Administration of Justice Committee*

*Report of the Legislative Branch and Executive Branch Committee*

## Letter from the Chair



### OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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June 23, 2017

Senator Charleta B. Tavares, Co-chair  
Senate Building  
1 Capitol Square, 2<sup>nd</sup> Floor  
Columbus, Ohio 43215

Representative Jonathan Dever, Co-chair  
Riffe Center for Government and the Arts  
77 South High Street  
13<sup>th</sup> Floor  
Columbus, Ohio 43215

Dear Co-chairs Tavares and Dever,

On behalf of the Finance, Taxation, and Economic Development Committee, I present the committee's final report. The committee's charge was to review the provisions of the Ohio Constitution dealing with public debt, public works, finance, taxation, and corporations, as well as the general topics of tax reform and statewide economic development, including all sections of Article VIII (Public Debt and Public Works), Article XII (Finance and Taxation), and Article XIII (Corporations).

We spent the bulk of our time on Article VIII, with a particular focus on a recommendation to repeal a large number of sections relating to debt obligation sections that, while once necessary, no longer serve a purpose in that they no longer authorize the issuance of additional debt, and any debt issue pursuant to them has been retired. We also recommended the elimination of sections creating a Sinking Fund and Sinking Fund Commission, as Ohio no longer uses a sinking fund for purposes of repaying debts, nor does the Sinking Fund Commission perform debt-reporting functions.

These recommendations, if adopted, would serve to shorten and streamline Ohio's Constitution, which was one of the key goals in creating a Commission to prescribe ways to modernize the document. Moreover, removing the non-operative and now-extraneous language would also serve to make the document more readable for, and accessible to, Ohio's citizens.

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Avoiding unintended consequences is paramount when considering fiscal matters, and so our review, by its nature, had to be careful and deliberative. Our recommendations were the result of that care, and represent the attention and combined wisdom of our experienced committee members. I am grateful for their service.

I am pleased to present this report on behalf of the committee.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Douglas Cole', is written over a horizontal line.

DOUGLAS COLE, CHAIR  
Finance, Taxation, and Economic Development Committee

Enclosure

## **I. Introduction**

This Report of the Finance, Taxation, and Economic Development Committee (“FTED Committee”) is issued pursuant to the conclusion of the work of the Ohio Constitutional Modernization Commission (“Commission”). It contains a summary of the committee’s organization and work products, including topics discussed and all recommendations made to the Commission.

The Commission was established in 2011 by enactment of Am. House Bill 188 by the 129th Ohio General Assembly. The Commission was charged with:

- Studying the Ohio Constitution;
- Promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- Considering the problems pertaining to the amendment of the constitution;
- Making recommendations from time to time to the General Assembly for the amendment of the constitution.

The Commission used six subject matter committees for the purpose of reviewing constitutional provisions: Education, Public Institutions, and Local Government Committee; Finance, Taxation, and Economic Development Committee; Judicial Branch and Administration of Justice Committee; Bill of Rights and Voting Committee; Constitutional Revision and Updating Committee; and Legislative Branch and Executive Branch Committee. There is a separate report for each committee providing a summary of its work and recommendations to the Commission.

The FTED Committee was assigned the responsibility of reviewing the following sections of the Ohio Constitution:

- Article VIII (Public Debt and Public Works)
- Article XII (Finance and Taxation)
- Article XIII (Corporation)

In addition, all committees could be assigned to review other issues or proposed constitutional amendments as needed by the Coordinating Committee or the Commission.

## II. Membership of the Committee

Under Rule 6.2, each member of the Commission was assigned to serve on two subject matter committees. In total, ten members were appointed to the Finance, Taxation, and Economic Development Committee.

The following individuals were serving on the FTED Committee in June 2017:

- Douglas R. Cole      Chair
- Karla L. Bell      Vice-chair
- Herb Asher
- Rep. Kathleen Clyde
- Jo Ann Davidson
- Rep. Jonathan Dever
- Frederick E. Mills
- Sen. Bob Peterson
- Sen. Charleta B. Tavares
- Kathleen M. Trafford

### Finance, Taxation, and Economic Development Committee Meeting



### **III. Summary of Recommendations**

In total, the FTED Committee made eight recommendations to the Commission. Table 1 summarizes the recommendations including when they were made and the Commission's action.

Under Rules 8.3 and 9.4 of the Commission Rules of Procedure and Conduct, a committee recommendation for no change to the Constitution required consideration at one scheduled meeting and a majority vote in favor, while a recommendation for change required consideration at two meetings and a vote in favor by a majority of the committee members. Following a favorable vote, a recommendation was forwarded to the Coordinating Committee to review the recommendation as to form. After Coordinating Committee approval, the recommendation was then sent to the Commission co-chairs to place on the Commission agenda.

These recommendations were presented in four separate reports and one addendum containing the background and discussion regarding the affected constitutional provisions. The separate reports and addendum are available in Appendix 1.

In some cases, constitutional sections were the subject of discussion by the committee but no recommendation was made. In other cases, there were constitutional sections assigned to the committee that were not able to be discussed before the closure of the Commission. Appendix 3 contains a status summary of all sections assigned to the committee, including those which did not progress to the Commission.

Table 1: Finance, Taxation and Economic Development Committee Recommendations

Constitutional provision	Topic	Recommendation	Committee approval	Commission action	Vote
Art. VIII, §§ 1, 2	State Debt	Retain	May 12, 2016	Adopted Sept. 8, 2016	25-0
Art. VIII, § 3	State Debt	<b>Revise</b>	May 12, 2016	Adopted Sept. 8, 2016	25-0
Art. VIII, §§ 2b–2h, 2j, 2k	Authorization of Debt Obligations	<b>Repeal</b>	Apr. 14, 2016	Adopted Sept. 8, 2016	26-0
Art. VIII, §§ 2l–2s	Additional Authorization of Debt Obligations	Retain	Nov. 10, 2016	Adopted Mar. 9, 2017	21-0-1
Art. VIII, § 2t	General Obligation Bonds for Certain Facility Costs	<b>Adopt</b>	Apr. 14, 2016	Adopted Sept. 8, 2016	26-0
Art. VIII, §§ 7–11	The Sinking Fund and Sinking Fund Commission	<b>Repeal</b>	May 12, 2016	Adopted Sept. 8, 2016	26-0
Art. VIII, §§ 7–11	Addendum to Sinking Fund recommendation: Replace debt reporting functions	N/A	May 11, 2017	Adopted June 8, 2017	Unanimous voice vote
Art. VIII, § 18	Protection for Certain Bond Holders	<b>Adopt</b>	Apr. 14, 2016	Adopted Sept. 8, 2016	26-0

#### **IV. Summary Proceedings of the Finance, Taxation and Economic Development Committee**

(NOTE: The full record of committee minutes is presented in Appendix 2.)

##### 2013-2014

During the 2013-2014 biennium, the committee focused on several different concepts related to state finance, taxation, debt, and economic development. The committee considered the question of what the state's role should be in encouraging economic development through funding of private enterprise, the impact of tax preferences and other tax-related considerations on state financing and economic growth, and how the state addresses debt.

Speakers who appeared before the committee included Squire Sanders Attorney Gregory W. Stype, and Ohio Office of Budget and Management Deputy Director of Budget Management Kurt Kauffman, who jointly presented on the topic of the state debt, including limitations on debt, debt authorizations, and sinking fund provisions. Also presenting to the committee were Thomas M. Zaino and Joanne Limbach, both former Ohio Tax Commissioners, who spoke about the background of and issues related to the tax provisions in the Ohio Constitution. The committee also heard from Scott J. Ziance, a tax attorney with the Vorys law firm, who discussed the history of economic development in Ohio, particularly on the expansion of state and local government and sections of Article VIII that apply to state economic development. Lisa Patt-McDaniel, former director of the Ohio Department of Development, spoke to the committee as an advocate for maximizing the state's flexibility in financing and for adopting other changes that would encourage state economic growth. Paul L. Toth, Jr., who is president and CEO of the Toledo-Lucas County Port Authority, described to the committee the history of his company and its public-private nature, emphasizing how such hybrid entities can benefit Ohio's economy. Professor Dale A. Oesterle, of the Ohio State University Moritz College of Law presented to the committee on the topic of public-private partnerships, emphasizing that, with appropriate limitations, government may encourage economic development through the funding of private enterprise. Additional presenters included Seth Metcalf, who is Deputy Treasurer and Executive Counsel of the Ohio Treasurer's Office, who discussed the Sinking Fund Commission; and Jon Honeck, Director of Public Policy and Advocacy of the Center for Community Solutions, who spoke regarding Ohio's system for granting tax credits and other types of tax preferences, and how that system might be revised.

##### *Reports and Recommendations*

The Finance, Taxation, and Economic Development Committee did not forward any reports and recommendations to the Commission during this biennium.

##### 2015-2016

During 2015 and 2016, the committee continued its consideration of how the state addresses debt. The committee heard from Seth Metcalf, Deputy Treasurer and Executive Counsel of the Ohio Treasurer's Office, as well as from Professor Richard Briffault of the Columbia University Law School, both of whom presented ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future. The committee also heard a presentation by Timothy S. Keen, director of the Ohio Office of Budget and Management,

who suggested several ways in which the state's debt provisions in Article VIII could be modernized. The committee benefited from presentations by Jonathan Azoff, director of the office of debt management and senior counsel to the Ohio Treasurer's Office; Kurt Kauffman, acting assistant director of the Office of Budget and Management; and Attorney Gregory W. Stype of Squire Patton Boggs (US) LLP, who is bond counsel to the Ohio Public Facilities Commission.

### *Reports and Recommendations*

During this biennium, the Finance, Taxation, and Economic Development Committee issued four reports and recommendations.

First, in April 2016, the committee issued a report and recommendation addressing Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, and 2k, additionally proposing two new related sections, Section 2t and Section 18. In its report and recommendation, the committee indicated that Sections 2b through 2h, as well as Sections 2j and 2k, were obsolete because the bonds referenced by the sections have been paid off, or the bonding authority has lapsed. In connection with the elimination of these obsolete provisions, the report and recommendation proposed a new constitutional provision, Section 18, in order to protect the interests of anyone who may be holding an outstanding bond issued under the sections recommended for repeal. Finally, the report and recommendation discussed the function of Section 2i, which authorizes the issuance of lease-appropriation revenue bonds for certain purposes, noting testimony before the committee establishing that a reauthorization of those bonds as general obligation debt would save the state money. In response, the committee recommended the adoption of a new provision, Section 2t, that would allow the General Assembly to reauthorize all lease-appropriation bonds as general obligation debt.

In May 2016, the committee issued a report and recommendation that recommended retaining Article VIII, Sections 1 and 3 in their current form, and revising Article VIII, Section 2 to remove reference to the Sinking Fund based on the committee's conclusion that the Sinking Fund provisions found in Article VIII, Sections 7 through 11 are obsolete. Article VIII, Sections 1, 2, and 3 impose limitations on the state incurring debt, and express a policy of fiscal restraint.

The committee issued a report and recommendation in May 2016 relating to Sections 7, 8, 9, 10, and 11 of Article VIII. Those sections, which had their origin in 1851, provide for a Sinking Fund to pay down state debt and provide for a "Sinking Fund Commission" to supervise the management of the fund. Testimony before the committee established that the Sinking Fund is no longer used for this purpose, and that the functions of the Sinking Fund Commission have been assumed by other state officials and agencies. Thus, the committee recommended that Sections 7 through 11 be repealed.

These three reports and recommendations of the committee were presented at two meetings of the full Commission, and were adopted by the Commission on September 8, 2016.

In November 2016, the committee issued a report and recommendation relating to Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, all sections approving the issuance of general obligation debt but which, unlike Sections 2b, 2c, 2d, 2e, 2f, 2h, 2j, and 2k, do not involve bonds that have been fully issued and paid off, or for which bonding authority has lapsed. For this reason, the report and recommendation indicates that Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s should be retained in their current form.

## 2017

During the first half of 2017, the committee continued its consideration of how the state addresses debt. In addition, the committee had brief discussions of some of the issues relating to other topics assigned to it, including Article XII (Finance and Taxation), Article XIII (Corporations), and topics relating to tax reform and statewide economic development.

The primary Article VIII issue considered in 2017 concerned whether to recommend a new constitutional provision to assign debt-reporting functions to the Treasurer of State. Because the committee had recommended the repeal of the sinking fund provisions, Article VIII, Sections 7 to 11, the committee recognized a potential need for a new constitutional provision addressing the responsibility for providing a report on state debt. The treasurer's office had recommended such a provision, and the Office of Budget and Management (OBM) agreed that there is a need for a modernized provision assigning debt-reporting functions to the treasurer. There was an initial consensus of members of the committee that the assignment of the debt reporting function should be included in the constitution, and staff was asked to assist in the drafting of a constitutional provision for the committee's review. On May 11, 2017, however, the committee approved a proposed statement that a debt reporting function should be assigned to the treasurer with no preference as to whether it should be statutory or constitutional.

As a result of its focus on certain portions of Article VIII, the committee did not have time to undertake a deep review of other sections of this article, including: Sections 4 and 5, which prohibit the state from giving credit to or assuming debt from private corporations, Section 6, which prohibits political subdivisions from joint stock ownership or lending in credit in relation to private corporations, and Sections 13 through 17. Nor did the committee have time to address other topics assigned to it, including Article XII (Finance and Taxation), Article XIII (Corporations), including a proposal concerning tax credits, and topics relating to tax reform and statewide economic development.

### *Reports and Recommendations*

The Finance, Taxation, and Economic Development Committee did not issue any additional reports and recommendations in 2017; however, the proposed statement approved at the May meeting was drafted as an Addendum to the previously approved report and recommendation on Article VIII, Sections 7 through 11, and approved by the Commission at its final meeting.

# **Appendix 1**

Finance, Taxation, and Economic  
Development Committee

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Reports & Recommendations  
of the Committee

## **Reports & Recommendations of the Committee**

Constitutional provision	Topic
Art. VIII, §§ 1, 2	State Debt
Art. VIII, § 3	State Debt
Art. VIII, §§ 2b–2h, 2j, 2k	Authorization of Debt Obligations
Art. VIII, §§ 2l–2s	Additional Authorization of Debt Obligations
Art. VIII, § 2t	General Obligation Bonds for Certain Facility Costs
Art. VIII, §§ 7–11	The Sinking Fund and Sinking Fund Commission
Art. VIII, § 18	Protection for Certain Bond Holders



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### OHIO CONSTITUTION ARTICLE VIII SECTIONS 1, 2, AND 3

#### STATE DEBT

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The Finance, Taxation, and Economic Development Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 1, 2, and 3 of Article VIII of the Ohio Constitution concerning state debt. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that Article VIII, Sections 1 and 3 be retained in their current form, and that Section 2 be revised to eliminate an outdated reference.*

*Specifically, the committee recommends retaining the \$750,000 debt limit in Section 1 because it is important to public perception of state spending, and because the limit has not created an obstacle to state fiscal planning or growth in the years since its adoption in 1851.*

*The committee further recommends a revision to Section 2 that would remove a reference to the Sinking Fund based on the committee's separate recommendation that sections of Article VIII creating the Sinking Fund and the Sinking Fund Commission be repealed.*

*Finally, the committee recommends Section 3 be retained in its current form for the reason that it emphasizes a public policy encouraging debt avoidance and sound financial practice.*

#### **Background**

Article VIII deals with public debt and public works, and was adopted as part of the 1851 constitution. As proposed by delegates to the 1851 Constitutional Convention, Article VIII, Sections 1, 2, and 3 bar the state from incurring debt except in limited circumstances, primarily involving cash flow and military invasions and other emergencies.

Section 1 sets a strict limit on the dollar amount of debt the state may incur, providing:

The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Section 2 recognizes that civil unrest could necessitate exceeding the \$750,000 debt limit created in Section 1, and so provides:

In addition to the above limited power, the state may contract debts to repel invasion, suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the state, shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

Emphasizing the importance of the limits set in Sections 1 and 2, Section 3 provides:

Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state.

### **Amendments, Proposed Amendments, and Other Review**

The Ohio Constitutional Revision Commission (1970s Commission) studied Article VIII in depth and made extensive recommendations concerning how the state incurs debt.<sup>1</sup> The 1970s Commission recommended the repeal of the \$750,000 debt limitation in Article VIII, Section 1, replacing it with a limit based on six percent of the average annual revenue of the state.<sup>2</sup> In its December 31, 1972 report, the 1970s Commission proposed the following changes in relation to Article VIII, Sections 1 through 3:

- Established “a constitutional debt formula, based on a moving average of state revenues, by which the state, by a three fifths (3/5) vote of the General Assembly, could incur debt for capital improvement purposes. The proposed formula would in effect limit the amount of money which could be spent to repay such debt to six per cent (6%) of the base, which is the average of the revenues of the state, as defined in the Constitution, for the then preceding two fiscal years. The proposed formula would also limit the amount of the principal of new debt which could be issued in any fiscal year to eight per cent (8%) of the base, and require that a specific part of the total be repaid every fiscal year.”

- Continued “the authority of the state to contract debt outside the debt limit to repel invasion, suppress insurrection, and defend the state in war.”
- Authorized “short-term borrowing by the state to meet appropriations and require[d] that money borrowed for this purpose be repaid within the fiscal year in which it is borrowed.”
- Required “voter approval in a referendum for incurring debt outside the debt limit or for purposes other than capital improvements.”
- Required “the General Assembly to prescribe the methods and procedures for evidencing, refunding, and retiring state debt, and to provide for its full and timely payment.”
- Required “the General Assembly to perform certain functions of a technical nature in connection with the state’s bonded debt, and impose certain duties on the Treasurer of State in regard to it.”
- Permitted “that state debt be contracted, and the credit of the state be extended, only for a public purpose declared by the General Assembly in the law authorizing such debt or use of credit.” \* \* \*<sup>3</sup>

Some of these recommendations were the subject of the General Assembly’s 1977 ballot proposal that, among other actions, would have eliminated the \$750,000 debt limitation in Section 1, as well as the debt restrictions contained in Sections 2 and 3. As presented on the November 8, 1977 ballot, Issue 4 stated:

“PROPOSED CONSTITUTIONAL AMENDMENT

To adopt Section 1 of Article VIII and repeal Sections 1, 2, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 3, 7, 9, and 10 of Article VIII and Section 6 of Article XII of the Constitution of Ohio

1. To repeal the general state constitutional debt limit of \$750,000 and replace it with authority to incur debt for capital improvements by a two-thirds majority vote of each house of the general assembly within specified limitations directly related to state revenues.
2. To permit the state to contract debt without limitation on amount of purpose, in addition to the authority specified above, if that debt is submitted to a vote of the electors by a three-fifths majority vote of each house of the general assembly and approved by a majority of the electors voting on the question.
3. To require the general assembly to retire at least 4% of the state’s indebtedness each year.

4. To permit the state to borrow funds to meet a current year's appropriations if any such loan is repaid out of that year's revenues.
5. To repeal part of the constitutional requirements relating to a sinking fund and to require that the general assembly provide for the repayment of state debt.
6. To enumerate purposes and amounts for which the first \$640 million of capital improvement debt would have to be appropriated.

(Proposed by Resolution of the General Assembly of Ohio)<sup>4</sup>

Issue 4 was overwhelmingly defeated by a margin of 72.5 percent to 27.5 percent, and there has been no effort since to revise Article VIII, Sections 1, 2, or 3.<sup>5</sup>

### **Litigation Involving the Provisions**

The Supreme Court of Ohio has issued two influential decisions regarding these sections of Article VIII.

In *State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424, 513 N.E.2d 1332 (1987), the Court concluded Section 2's reference to the "present outstanding indebtedness of the state" was meant to address the state's fiscal status in 1851. In *Shkurti*, the General Assembly had enacted legislation directing the treasurer of state to issue bonds to repay outstanding advances by the federal government to the Ohio unemployment compensation program. When the treasurer refused to issue the bonds because doing so was not constitutionally authorized, the director of the Office of Budget and Management (OBM), brought an action in mandamus to compel the issuance of the bonds. Rejecting the argument that Section 2 authorized the bond issuance because the intent was to relieve the "present outstanding indebtedness of the state," the Court found the sole purpose of Section 2's exception to the Article VIII debt restrictions was to pay down the debt that existed in 1851:

First, the precise modification of "outstanding indebtedness" by the definite article "the," and the adjective "present," virtually compels this conclusion. Second, examination of the relevant constitutional debates convinces us that the then outstanding debt concerned the framers. They debated the wisdom of the sinking fund procedure for the retirement of that debt, the equity and practicality of relatively early retirement of the debt versus more extended retirement periods and, consequently, the amount that should be committed annually to the sinking fund to retire the principal and interest on the debt. The debates do not indicate any broader purpose for this exception.

*Id.*, 32 Ohio St.3d at 426, 513 N.E.2d at 1334.

*State ex rel. Ohio Funds Mgmt. Bd. v. Walker*, 55 Ohio St.3d 1, 561 N.E.2d 927 (1990), presented another opportunity for the Court to consider Sections 1, 2, and 3 of Article VIII. In that case, the General Assembly sought to address General Revenue Fund cash flow issues by

enacting R.C. 113.31 *et seq.*, legislation that created the Ohio Funds Management Board (“the Board”) and authorized the state treasurer, at the recommendation of the Board, to issue “revenue anticipation notes.” As part of this procedure, the statute required the director of OBM to provide relevant financial data to the Board and the treasurer, and the OBM director refused, arguing that doing so would allow the issuance of the “revenue anticipation notes,” which are a form of state debt prohibited by Article VIII, Sections 1 and 3. The Board then pursued an action in mandamus, arguing the notes were not debt because they would not be designated as a debt, would not be guaranteed by the faith and credit of the state, and would be paid only from a special repayment fund. The Board further asserted that future taxes would not be levied to pay the notes, that taxes had already been levied, and that the issuance of the notes and the appropriation of monies to pay the notes would occur in the same fiscal year. The Court disagreed, holding that the statutory scheme that created the Board and authorized the issuance of the notes was unconstitutional:

This court, in its history of reviewing Sections 1, 2, and 3 of Article VIII of the Ohio Constitution, has been a watchful guardian of the concern of the framers of these constitutional prohibitions against the creation of state debt not authorized by the Constitution, and we feel constrained to again give heed to such concerns. There have been few exceptions to the constitutional constraints of Sections 1 and 3 of Article VIII allowed by this court. In essence such exceptions have been those financial transactions involving the erection or construction of a revenue-producing public building or facility, whose proceeds were placed in a “special fund.” [Citations omitted.]

\* \* \*

However, both parties agree that a “special fund” obligation is not involved in the instant case. No bonds are to be issued pursuant to this new law, no facilities will be provided or constructed with the note proceeds, and no income will be generated by any facility to retire the obligations. The notes will be retired by tax revenues.

*Id.*, 55 Ohio St.3d at 9, 561 N.E.2d at 934.

Observing that pre-existing statutes afforded the necessary devices for addressing cash flow issues, the Court held the procedure set out in R.C. 113.31 *et seq.* was unconstitutional because the scheme authorized state debt in derogation of Article VIII, Sections 1 and 2. *Id.*, 55 Ohio St.3d at 7, 11; 561 N.E.2d at 932, 935-36.

## **Presentations and Resources Considered**

### *Metcalf Presentation*

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the committee on May 8, 2014, March 12, 2015, and March 10, 2016. Mr. Metcalf pointed out that Section 1’s \$750,000 debt limitation, representing 46 percent of the state’s general

revenue expenditures at the time the limit was set, is no longer meaningful and could be raised. He did not suggest a specific figure, but pointed out that today's debt of \$10.93 billion, as constitutionally authorized by the electors of the state, represents approximately 38 percent of the state's general revenue expenditures.

As a supplement to an increased overall debt limitation, Mr. Metcalf pointed to the adoption in 1999 of Article VIII, Section 17, which contains a sliding scale under which the total debt service of the state is limited to five percent of the total estimated revenues of the state for the general revenue fund. He also pointed out that this approach would not tie borrowing to specific purposes, thus giving the General Assembly flexibility as to how to use the public debt.

### *Briffault Presentation*

On June 4, 2015, Professor Richard Briffault of the Columbia University Law School, provided ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future.

Prof. Briffault indicated that debt provisions began to be placed in state constitutions in the 1840s as a result of economic distress caused by excessive state borrowing to finance the construction of canals, turnpikes, and railroads. He described how states adopted provisions limiting state governments in their financial transactions, including limiting their ability to invest, to take an equity share in private enterprises, to lend credit, and to act as a surety. Limitations were also placed on the amount of debt that could be accumulated, as well as the procedures for entering into that debt. Prof. Briffault noted that many states, including Ohio, still have dollar caps on debt that are the same as they were in the 1840s or 1850s.

Describing the different ways states have dealt with the subject of state debt, Prof. Briffault recognized some states' approach of using a constitutional ban on debt. While those limits are considered low today, they were not necessarily low at the time of adoption. To get around the low limits, state constitutions may allow exceptions for invasion, wartime, or emergencies. He said these limitations generally apply to long-term debt, which doesn't have to be paid within the year in which it was issued, but exempt short-term debt, revenue bonds, and other nonguaranteed debt. Prof. Briffault noted that no state has learned to live without debt, with the result that, if the state constitution prohibits debt, states will amend their constitutions to allow it. The real debt limit then becomes the complicated nature of enacting a constitutional amendment, according to Prof. Briffault.

Describing other approaches states have taken, Prof. Briffault said it is possible to have a constitution with no debt limit, with the state legislative body amending the debt limit, rather than the voters doing so through an amendment process. He said another approach to debt issuance involves legislative approval followed by voter approval by a simple majority. Prof. Briffault said in this model, the procedure is for classic guaranteed debt, and doesn't cover short-term debt, revenue bonds, or non-guaranteed debt. He described another approach, in which states impose a flexible limit, or "carrying capacity," on debt. In that model, the constitution makers think the state can carry a certain amount of debt and that voter approval is not needed. He said one way states calculate this "carrying capacity" is by considering debt service as a

percentage of state revenues based upon a rolling three- or five-year average. A final approach identified by Prof. Briffault is where a state calculates the acceptable amount of debt or debt service based upon a percentage of state revenues, and then requires voter approval to go beyond that limit.

Summarizing these approaches, Prof. Briffault identified two “big pictures.” One approach is where the legislature proposes and voters decide, based on the notion that debt is long term and the decision to borrow requires a constitutional amendment. He said the other, “carrying capacity,” approach is binding, but recognizes that some financial arrangements are technical, and should not be decided by voters on a ballot proposition basis but left to the legislature to determine how much debt to devote to state enterprises. Prof. Briffault noted that some states have combined these two models.

### *Keen Presentation*

On October 8, 2015, Timothy S. Keen, director of OBM, provided an in-depth analysis of the history and purpose of Article VIII, as well as suggestions for modernizing its debt provisions.

Mr. Keen said Ohio’s earliest debt was issued by the Ohio Canal Commission in 1825 to finance the canal system, with the General Assembly in 1837 passing the Ohio Loan Law intended to assist in the building of additional canals by loaning up to one-third of the cost of construction to Ohio businesses that were able to raise the remaining costs. In practice, however, most of the loans went to railroad companies, spurring railroad growth in the state that competed with the canal business. Mr. Keen indicated that the end result of the debt issuance was an improved transportation system, but the debt also over-extended the treasury and the state had to borrow money to meet its expenses. Mr. Keen noted that, by 1839, Ohio had a deficit of more than one quarter of a million dollars and the Ohio Loan Law was repealed the next year. After reforms of the state’s taxation and tax collection system in 1846, the debt was refinanced and Ohio was able to service the debt, but the concern over debt was a subject of discussion at the Constitutional Convention of 1850-1851. Mr. Keen pointed out that this concern is the source of the \$750,000 debt limit in Article VIII, Section 1.

Mr. Keen continued that Section 2, as well as select other sections of Article VIII, expressly authorizes the purposes and amounts for which state debt may be issued, while Section 3 prohibits any other debt except that which has been expressly authorized. Further, he said, Section 4 prohibits the state from lending its aid and credit, and Section 5 prohibits the state from assuming the debts of any political subdivision or corporation. Mr. Keen concluded that the state’s challenging financial history at the time of enactment of Article VIII explains Ohio’s conservative approach to debt, debt authorization, and debt repayment.

Turning to the present-day approach to state debt, Mr. Keen noted that, by 22 constitutional amendments approved from 1921 to the present, Ohio voters have expressly authorized the incurrence of state debt for specific categories of capital facilities, to support research and development activities, and provide bonuses for Ohio’s war veterans. He said, currently, general obligation debt is authorized to be incurred for highways, K-12 and higher education facilities,

local public works infrastructure, natural resources, parks and conservation, and third frontier and coal research and development.

He said non-general obligation lease-appropriation debt is authorized to provide facilities for housing branches and agencies of state government and their functions, including state office buildings, correctional and juvenile detention facilities, and cultural, historical and sports facilities; mental health and developmental disability facilities; and parks and recreational facilities.

Mr. Keen emphasized that Article VIII's framework for authorizing debt has served the state exceptionally well for more than 150 years. He said the process of asking voters to review and approve bond authorizations sets an appropriately high bar for committing the tax resources of the state over the long term, adding that Ohio's long tradition of requiring voter approval ensures that debt is proposed only for essential needs, and those needs must be explained and presented to voters for their careful consideration. He complimented voters, calling them "worthy arbiters," based on their having approved 26 and rejected 17 Article VIII debt-related ballot issues since 1900. As a result, Mr. Keen said he would not recommend wholesale reform to Article VIII, and advocated retaining the \$750,000 debt limit in Section 1 because it forms the basis of Ohio's balanced budget requirement.

#### *Azoff Presentation*

On April 14, 2016, the committee heard a presentation by Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, on the role of his office in relation to state debt.

Mr. Azoff indicated the treasurer's office supports changing the reference to the sinking fund in Section 2 to the word "state." He said this recommendation is based on the fact that a true "sinking fund" no longer exists, further noting that Sections 7 through 11 of Article VIII are recommended for repeal because the state no longer utilizes a sinking fund, with the duties of the Sinking Fund Commission now being performed by the treasurer's office.

#### *Kauffman Presentation*

Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), appeared before the committee on April 14, 2016 to provide comment related to Article VIII.

In addition to his other comments, Mr. Kauffman said OBM supports the proposal to retain Article VIII, Sections 1 and 3 in their current form, and to revise Section 2 only to eliminate what would be an outdated reference to the Commissioners of the Sinking Fund.

#### *Additional Presentations*

In addition to the major presentations by Mr. Metcalf, Prof. Briffault, Mr. Keen, Mr. Azoff, and Mr. Kauffman, as recounted above, the committee benefited from comments by Gregory W. Stype of Squire Patton Boggs (US) LLP, who serves as bond counsel to the Ohio Public

Facilities Commission; and Steven H. Steinglass, senior policy advisor to the Ohio Constitutional Modernization Commission.

On December 10, 2015, Mr. Steinglass pointed out that the framers of the 1851 constitution did not see the \$750,000 limit as a ceiling on borrowing, but rather as part of a constitutional framework that sought to bar incurring debt. He noted that the practice of incurring debt through specific constitutional authorizations did not begin until the 20<sup>th</sup> century. At the same meeting, Mr. Stype clarified that the \$750,000 limitation set out in Article VIII, Section 1, is not so much a limit on capital financing, as it is a limit on borrowing to contract debts to supply “casual deficits or failures in revenue, or to meet expenses not otherwise provided for.” Mr. Stype also noted that, in contrast to some other states, Ohio has long managed its cash flow needs in each fiscal year by using a “total operating fund” approach, rather than borrowing to meet cash flow needs.<sup>6</sup>

### **Discussion and Consideration**

In reviewing Article VIII, Section 1, the committee discussed whether to recommend retaining or modernizing the \$750,000 debt limit, which dates from 1851. Although committee members recognized that the dollar amount of the debt limit is outdated, they observed that the amount is not an obstacle to state economic growth because voters have approved amendments to Article VIII authorizing the issuance of debt in excess of that amount. Committee members also recognized that raising or removing the debt limit could affect the state’s bond rating as well as potentially affecting state fiscal operations. Finally, committee members expressed concern that a change in the debt limit could be misunderstood by voters. Based on these considerations, the committee concluded that the \$750,000 debt limit in Section 1 should be retained.

With regard to Section 2, the committee recognized the need to retain the state’s ability to contract debt in the event of a calamity such as war or insurrection. However, based on the committee’s decision to recommend repeal of sections relating to the Sinking Fund and the Sinking Fund Commission, as set forth in a companion Report and Recommendation on Article VIII, Sections 7, 8, 9, 10, and 11, titled “The Sinking Fund and the Sinking Fund Commission,” the committee wondered whether the Sinking Fund reference should be removed from Section 2.

The committee considered Section 3 as being related to the question posed by Section 1, which is whether the \$750,000 debt limit should be modernized or eliminated. Section 3 prescribes a general policy of debt avoidance, emphasizing that only the debts specified in Sections 1 and 2, which are accepted as including the debts authorized by Sections 2b through 2s, shall be created by or on behalf of the state. In addressing Section 3, the committee agreed that it was important to maintain that section’s emphasis on avoiding debt, recognizing that all state debt ultimately must be approved by the voters.

### **Conclusion**

The Finance, Taxation, and Economic Development Committee concludes that Article VIII, Section 1 should be retained in its present form. The committee recognizes that, while the debt limit of \$750,000 is outdated, proposing a new dollar amount could be problematic. The

committee further observes that the expression of a debt limit is important to the public's perception of state spending, so that eliminating the debt limit or having a debt limit that is tied to a fluctuating revenue source could affect the state's economy in unforeseen ways. Thus, the committee concludes that, because the \$750,000 debt limit is not an obstacle to the achievement of state financial goals, and because other provisions in the constitution allow the state to incur debt to meet its needs, Section 1 does not require alteration.

Regarding Section 2, the committee concludes that the section's specific reference to the Sinking Fund as a source for paying down state debt is outdated and should be replaced with the more generic word "state." Thus, the committee recommends the provision be modified to read as follows:

In addition to the above limited power, the state may contract debts to repel invasion, suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the state, shall be so contracted as to be payable by the ~~sinking fund state, hereinafter provided for,~~ as the same shall accumulate.<sup>7</sup>

Although Section 3's reiteration of the restriction on state debt articulated in Section 1 seems redundant, Section 3 expresses and emphasizes a laudable policy of debt avoidance. Thus, the committee does not recommend a change that might serve to diminish the importance of that objective and so recommends that Section 3 be retained in its present form.

## Date Issued

After formal consideration by the Finance, Taxation, and Economic Development Committee on April 14, 2016, and May 12, 2016, the committee unanimously voted to issue this report and recommendation on May 12, 2016.

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## Endnotes

<sup>1</sup> Ohio Constitutional Revision Commission Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt (Dec. 31, 1972), <http://www.lsc.ohio.gov/ocrc/recommendations%20pt2%20state%20debt.pdf> (last visited Feb. 5, 2016).

<sup>2</sup> *Id.* at 23-31.

<sup>3</sup> *Id.* at 12-13.

<sup>4</sup> Source: Youngstown *Vindicator*, Nov. 6, 1977. Available at: <https://news.google.com/newspapers?id=zFRJAAAAIIBAJ&sjid=sYQMAAAAIBAJ&pg=2945,1851669&hl=en> (last visited March 28, 2016).

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<sup>5</sup> See <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1970-1979OfficialElectionResults/GenElect110877.aspx> (last visited March 28, 2016); and <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited March 28, 2016).

Meanwhile, voters have approved multiple constitutional amendments authorizing the issuance of state debt for the purposes of subsidizing low cost housing (Section 14, approved Nov. 2, 1982; Section 16, approved Nov. 6, 1990); financing coal research (Section 15, approved Nov. 5, 1985); financing local government efforts to improve roads, water, sewer, and other infrastructure (Section 2k, approved Nov. 3, 1987); improving parks, conservation and natural resources (Section 2l, approved Nov. 2, 1993); funding public works and highways (Section 2m, approved Nov. 7, 1995); funding school facilities (Section 2n, Section 17, approved Nov. 2, 1999); funding environmental conservation projects (Section 2o, approved Nov. 7, 2000; Section 2q, approved Nov. 4, 2008); creating jobs and stimulating economic growth (Section 2p, approved Nov. 8, 2005; amendment approved May 4, 2010); compensating veterans of the Persian Gulf, Afghanistan and Iraq Conflicts (Section 2r, approved Nov. 3, 2009); and for capital improvements (Section 2s, approved May 6, 2014). Source: Ohio Constitution Law and History Table of Proposed Amendments, Cleveland-Marshall College of Law Library, available at: <http://guides.law.csuohio.edu/ohioconstitution/ohioconstitutionamendmentstable> (last visited March 28, 2016).

<sup>6</sup> R.C. 126.06 describes this process, providing:

The total operating fund consists of all funds in the state treasury except the auto registration distribution fund, local motor vehicle license tax fund, development bond retirement fund, facilities establishment fund, gasoline excise tax fund, higher education improvement fund, highway improvement bond retirement fund, highway capital improvement fund, improvements bond retirement fund, mental health facilities improvement fund, parks and recreation improvement fund, public improvements bond retirement fund, school district income tax fund, state agency facilities improvement fund, state and local government highway distribution fund, state highway safety fund, Vietnam conflict compensation fund, any other fund determined by the director of budget and management to be a bond fund or bond retirement fund, and such portion of the highway operating fund as is determined by the director of budget and management and the director of transportation to be restricted by Section 5a of Article XII, Ohio Constitution.

When determining the availability of money in the total operating fund to pay claims chargeable to a fund contained within the total operating fund, the director of budget and management shall use the same procedures and criteria the director employs in determining the availability of money in a fund contained within the total operating fund. The director may establish limits on the negative cash balance of the general revenue fund within the total operating fund, but in no case shall the negative cash balance of the general revenue fund exceed ten per cent of the total revenue of the general revenue fund in the preceding fiscal year.

<sup>7</sup> In its report and recommendation titled “The Sinking Fund and the Sinking Fund Commission,” the committee recommends the repeal of Article VIII, Sections 7, 8, 9, 10, and 11. Although the committee found it more logical to review Sections 1, 2, and 3 in a separate document from Sections 7 through 11, any ballot issue proposing to repeal Sections 7 through 11 should also include a proposal to revise Section 2 to eliminate reference to the Sinking Fund.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### OHIO CONSTITUTION ARTICLE VIII SECTIONS 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k AND PROPOSED SECTIONS 2t AND 18

#### AUTHORIZATION OF DEBT OBLIGATIONS

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The Finance, Taxation, and Economic Development Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VIII of the Ohio Constitution concerning the authorization of debt obligations. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, dealing with authorization of debt obligations, be repealed for the reason that all involve bonds that have been fully issued and paid off, or for which bonding authority has lapsed due to the passage of time.*

*Further, in order to protect the holders of any outstanding bonds or obligations issued under the authority of Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, or 2k, the committee recommends the adoption of new Section 18, either through language proposed in Attachment A, or through substantially similar language. The new provision would require that any obligation entered into by the state under the authority of any section of Article VIII that is later repealed remains in full force and effect and continues to be secured in accordance with the original terms of the obligation.*

*Finally, the committee recommends the adoption of a new Section 2t, either through language proposed in Attachment B, or through substantially similar language, to authorize the issuance of general obligation bonds that could be used to refund obligations previously issued under the authority of Section 2i, and to issue new general obligation bonds for purposes related to facilities for mental health and developmental disabilities, parks and recreation, and housing branches and agencies of state government, as set forth in Section 2i.*

## Background

Article VIII deals with public debt and public works, and was adopted as part of the 1851 constitution.

Delegates to the 1851 Constitutional Convention sought to limit the actions of the General Assembly in obligating the financial interests of the state so as to avoid problems that had arisen when the state extended its credit to private interests, and to prevent another debt crisis, such as the one resulting from the construction of the state's transportation system.<sup>1</sup> As proposed by delegates to the 1851 Constitutional Convention, Article VIII initially barred the state from incurring debt except in limited circumstances, primarily involving cash flow and military invasions and other emergencies. *See* Article VIII, Sections 1, 2, and 3.

For nearly one hundred years, from the adoption of the 1851 constitution through 1947, the voters of the state approved just one constitutional provision authorizing the issuance of additional debt. That occurred in 1921, when the voters approved Section 2a, a provision that authorized debt for establishing a system of adjusted compensation for Ohio veterans of World War I.<sup>2</sup> Section 2a was later repealed in 1953.

Then, over a forty year period, from 1947 through 1987, voters approved ten constitutional provisions within Article VIII authorizing the creation of additional debt. The ten sections, as discussed herein, include Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, and 2k.

Section 2b concerns the authorization of debt relating to adjusted compensation for service in World War II. It was adopted in 1947 and established a system of compensation for World War II veterans and their survivors by allowing the state to issue up to \$300 million in state bonds. To receive benefits, veterans had to be residents of the state for at least one year before entering service. Qualifying veterans or their survivors could receive up to \$400 in benefits. Veterans who served in the Merchant Marine, who were confined in penal institutions, or who were dishonorably discharged were ineligible. This provision required applications for payment to veterans or their survivors to be made before July 1, 1950.

Section 2c concerns the authorization of debt to construct the state highway system. It was adopted in 1953 and allowed the state to incur debt of up to \$500 million through the sale of bonds for the building and improvement of the state highway system. Section 2c was the first amendment to allow the state to incur debt for internal improvements, and is one of six amendments in Article VIII specifically providing funds for highways and roads.<sup>3</sup> No debt could be incurred under this section past March 1962, and all debt incurred under this authority had to be retired by 1972.

Section 2d concerns the authorization of debt for the payment of Korean Conflict bonuses. It was adopted in 1956 for the purpose of compensating Ohio veterans of the Korean Conflict who served on active duty from June 25, 1950 through July 19, 1953. The provision authorized the creation of the Korean Conflict Compensation Fund, funded through the sale of up to \$90 million in bonds and an initial transfer of \$4 million from the World War II fund established under Section 2b. The provision also created the Korean Conflict Compensation Bond Retirement

Fund to retire the debt on the bonds. As with the World War II fund, veterans or their survivors were eligible; however, veterans who served in the Merchant Marines, were confined in penal institutions, or were dishonorably discharged were not. All applications for compensation under this provision had to be made prior to January 1, 1959.

Section 2e relates to securing funds for public buildings. The section was adopted in 1955 to create a capital improvements bond retirement fund that would allocate up to \$150 million for building and improving structures at state penal, mental health, and welfare institutions, and at public schools and state-supported colleges and universities. The bonds and other obligations issued under this section had to be issued by December 1964. In addition, this section provided for the establishment of a state excise tax on cigarettes to pay any deficit in the fund.<sup>4</sup>

Section 2f authorizes the issuance of debt for school classrooms, support for universities, for recreation and conservation, and for state buildings. This section, adopted in 1963, funded many of the same projects referred to in Section 2e, including capital improvement projects for state-supported colleges and universities, as well as state penal, mental health, and welfare institutions. The section also permitted funds to be used for the establishment of parks and recreational areas and for the conservation of natural resources. Obligations issued under the authority of this section could not exceed \$250 million and had to mature in thirty years or less. The debt incurred under this section was to be retired through funds raised by the state's license, fuel, income, and property taxes, as well as through the excise tax on cigarettes established under section 2e, which could be collected through December 31, 1972, or until all the debt was retired.

Section 2g, approved by voters in 1964, allowed the state to issue debt up to \$500 million for highway and road construction. The revenues raised were to be used for the construction and repair of major state thoroughfares and urban extensions in the state's highway system. Retirement of the debt to finance these projects was to be made through fees and taxes, such as vehicle license and registration fees, and fuel and excise taxes. This section requires the entire debt to be discharged no later than 1989.

Section 2h authorizes the issuance of debt for development, specifically permitting the state to raise revenue in an amount up to \$290 million from the sale of bonds and other obligations to pay for state development projects. This section, adopted in 1965, allowed the state to spend funds on state-supported institutions of higher learning, with an emphasis on research and development, and for state projects dealing with flood control, state parks, and natural resource conservation. Funds also could be used to assist political subdivisions in building and extending water and sewage lines. The cutoff date for issuing obligations under this section was December 31, 1970, and all obligations issued under this section had to mature in thirty years or less.

Section 2i, approved by voters in 1968, relates to the state's ability to issue revenue bonds, sometimes referred to as lease-appropriation bonds, which are not supported by the full faith and credit of the state.<sup>5</sup> Specifically, the fifth paragraph of Article VIII, Section 2i authorizes the issuance of "revenue obligations and other obligations, *the owners or holders of which are not given the right to have excises or taxes levied by the general assembly for the payment of principal thereof or interest thereon*, for \* \* \* capital improvements for mental hygiene and retardation, parks and recreation, and housing of branches and agencies of state government,

which obligations \* \* \* shall not be deemed to be debts or bonded indebtedness of the state under other provisions of this Constitution.” [Emphasis added.] In lieu of a pledge of the state’s taxing power, payment of debt service on these obligations is legally “secured by a pledge under law, without necessity for further appropriation, of all or such portion as the general assembly authorizes of” any charges or other revenues or receipts that the state generates through the facilities that were financed with the debt. Notwithstanding this language, the actual source of payment of debt service on all obligations that have been issued for these purposes under Section 2i has been two-year lease-rental appropriations made by the General Assembly in each biennial state budget.<sup>6</sup>

Section 2j authorizes the creation of a compensation fund for Vietnam Conflict veterans and their survivors. It was adopted in 1973. To be eligible for compensation, veterans had to have served on active duty between August 5, 1964 and July 1, 1973, in the Republic of Vietnam or in hostile areas of Southeast Asia. The initial administrative costs of the fund were to be covered from the remaining balance of the Korean Conflict funds created by Section 2d, with the remaining revenues to be raised through the sale of up to \$300 million in bonds and other obligations. No bonds were to be issued after April 1977, and all applications for compensation had to be filed by January 1, 1978. As with the other amendments creating funds for war veterans and their survivors, compensation was not available for veterans who served in the Merchant Marine, were confined in penal institutions, or were dishonorably discharged.

Section 2k, adopted in 1987, was another amendment used to raise revenue for capital improvements to local public infrastructure. Section 2k provides that not more than \$120 million could be raised per calendar year, and that the total debt could not exceed \$1.2 billion with the condition that all obligations must mature within thirty years.

### **Amendments, Proposed Amendments, and Other Review**

The nine bond-authorizing sections recommended for repeal have never been amended.

The Ohio Constitutional Revision Commission (1970s Commission) studied Article VIII in depth and made extensive recommendations concerning how the state incurs debt.<sup>7</sup> The 1970s Commission recommended the repeal of the \$750,000 debt limitation in Article VIII, Section 1, replacing it with a limit based on six percent of the average annual revenue of the state.<sup>8</sup> It also recommended the repeal of seven obsolete debt-authorizing sections of Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, and 2h.<sup>9</sup>

The 1970s Commission recognized that the repeal of Sections 2b through 2h could adversely affect persons who held interest coupons or unredeemed bonds.<sup>10</sup> Therefore, the 1970s Commission included in its proposal a provision that would protect those who had vested interests in the bonds issued under the provisions being repealed.<sup>11</sup>

In November 1977, the General Assembly presented to voters a ballot issue that, if approved, would have repealed Sections 2b, 2c, 2d, 2e, 2f, 2g, and 2h, among other sections. However, Issue 4 was overwhelmingly defeated by a margin of 72.5 percent to 27.5 percent, and there has been no effort since to repeal those sections of Article VIII.<sup>12</sup>

## Litigation Involving the Provisions

No significant litigation has centered on the nine obsolete provisions being recommended for repeal. However, there has been some litigation involving Article VIII that is worthy of note.

An early recognition of the 1851 constitution's restriction on the state's ability to incur debt is set forth in *State v. Medbery*, 7 Ohio St. 522 (1857), in which the Ohio Supreme Court determined a five-year state public works contract, in the absence of revenue or appropriations by the General Assembly to fund the contract, created a debt obligation in violation of Article VIII, Sections 1 and 3.

The Court generally has upheld the adoption of constitutionally-based exceptions to the limitations on incurring debt. *See, e.g., Kasch v. Miller*, 104 Ohio St. 281, 135 N.E. 813 (1922), at syllabus (where statute provides that an improvement is to be paid for by the issue and sale of state bonds, with the principal and interest to be paid by revenues derived from the improvement, a state debt is not incurred within the purview of the state constitution).

The Court also has recognized the status of revenue bonds. In *State ex rel. Pub. Institutional Bldg. Auth. v. Griffith*, 135 Ohio St. 604, 22 N.E.2d 200 (1939), at syllabus paragraph 1, the Court held that the \$750,000 debt limitation only applies to debt for which the state assumes the risk of default; thus, it is not applicable to revenue bonds. More recently, in *State ex rel. Ohio Funds Mgmt. Bd. v. Walker*, 55 Ohio St.3d 1, 561 N.E.2d 927 (1990), the court reviewed the limitations on borrowing in Article VIII, holding that borrowing for short-term cash flow is state debt within the meaning of the limitations in Article VIII, Sections 1 and 3, and further rejecting the use of revenue bonds to finance short-term deficiencies in tax revenue. *Id.*, 55 Ohio St. 3d at 7, 561 N.E.2d at 932. *Accord State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424, 513 N.E.2d 1332.

## Presentations and Resources Considered

### *Metcalf Presentation*

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the committee on May 8, 2014, March 12, 2015, and March 10, 2016. In addition to reviewing the history of Article VIII, including the \$750,000 limitation in Section 1, with the difficulties inherent in needing to go to the ballot for approval of additional borrowing. Although he identified areas of possible reform, Mr. Metcalf expressed that the state framework for authorizing debt has served the state exceptionally well.

Mr. Metcalf pointed out that the \$750,000 debt limitation, representing 46 percent of the state's general revenue expenditures at the time the limit was set, is no longer meaningful and could be raised. He did not suggest a specific figure, but pointed out that today's debt of \$10.93 billion, as constitutionally authorized by the electors of the state, represents approximately 38 percent of the state's general revenue expenditures.

As a supplement to an increased overall debt limitation, Mr. Metcalf pointed to the adoption in 1999 of Article VIII, Section 17, which contains a sliding scale under which the total debt service of the state is limited to five percent of the total estimated revenues of the state for the general revenue fund. He also pointed out that this approach would not tie borrowing to specific purposes, thus giving the General Assembly flexibility as to how to use the public debt.

### *Briffault Presentation*

On June 4, 2015, Professor Richard Briffault of the Columbia University Law School, provided ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future.

Prof. Briffault indicated that debt provisions began to be placed in state constitutions in the 1840s as a result of economic distress caused by excessive state borrowing to finance the construction of canals, turnpikes, and railroads. He described how states adopted provisions limiting state governments in their financial transactions, including limiting their ability to invest, to take an equity share in private enterprises, to lend credit, and to act as a surety. Limitations were also placed on the amount of debt that could be accumulated, as well as the procedures for entering into that debt. Prof. Briffault noted that many states, including Ohio, still have dollar caps on debt that are the same as they were in the 1840s or 1850s.

Describing the different ways states have dealt with the subject of state debt, Prof. Briffault recognized some states' approach of using a constitutional ban on debt. While those limits are considered low today, they were not necessarily low at the time of adoption. To get around the low limits, state constitutions may allow exceptions for invasion, wartime, or emergencies. He said these limitations generally apply to long-term debt, which doesn't have to be paid within the year in which it was issued, but exempt short-term debt, revenue bonds, and other nonguaranteed debt. Prof. Briffault noted that no state has learned to live without debt, with the result that, if the state constitution prohibits debt, states will amend their constitutions to allow it. The real debt limit then becomes the complicated nature of enacting a constitutional amendment, according to Prof. Briffault.

Describing other approaches states have taken, Prof. Briffault said it is possible to have a constitution with no debt limit, with the state legislative body amending the debt limit, rather than the voters doing so through an amendment process. He said another approach to debt issuance involves legislative approval followed by voter approval by a simple majority. Prof. Briffault said in this model, the procedure is for classic guaranteed debt, and doesn't cover short-term debt, revenue bonds, or non-guaranteed debt. He described another approach, in which states impose a flexible limit, or "carrying capacity," on debt. In that model, the constitution makers think the state can carry a certain amount of debt and that voter approval is not needed. He said one way states calculate this "carrying capacity" is by considering debt service as a percentage of state revenues based upon a rolling three- or five-year average. A final approach identified by Prof. Briffault is where a state calculates the acceptable amount of debt or debt service based upon a percentage of state revenues, and then requires voter approval to go beyond that limit.

Summarizing these approaches, Prof. Briffault identified two “big pictures.” One approach is where the legislature proposes and voters decide, based on the notion that debt is long term and the decision to borrow requires a constitutional amendment. He said the other, “carrying capacity,” approach is binding, but recognizes that some financial arrangements are technical, and should not be decided by voters on a ballot proposition basis but left to the legislature to determine how much debt to devote to state enterprises. Prof. Briffault noted that some states have combined these two models.

### *Keen Presentation*

On October 8, 2015, Timothy S. Keen, director of the Ohio Office of Budget and Management, provided an in-depth analysis of the history and purpose of Article VIII, as well as suggestions for modernizing its debt provisions.

Mr. Keen said Ohio’s earliest debt was issued by the Ohio Canal Commission in 1825 to finance the canal system, with the General Assembly in 1837 passing the Ohio Loan Law intended to assist in the building of additional canals by loaning up to one-third of the cost of construction to Ohio businesses that were able to raise the remaining costs. In practice, however, most of the loans went to railroad companies, spurring railroad growth in the state that competed with the canal business. Mr. Keen indicated that the end result of the debt issuance was an improved transportation system, but the debt also over-extended the treasury and the state had to borrow money to meet its expenses. Mr. Keen noted that, by 1839, Ohio had a deficit of more than one quarter of a million dollars and the Ohio Loan Law was repealed the next year. After reforms of the state’s taxation and tax collection system in 1846, the debt was refinanced and Ohio was able to service the debt, but the concern over debt was a subject of discussion at the Constitutional Convention of 1850-1851. Mr. Keen pointed out that this concern is the source of the \$750,000 debt limit in Article VIII, Section 1.

Mr. Keen continued that Section 2, as well as select other sections of Article VIII, expressly authorizes the purposes and amounts for which state debt may be issued, while Section 3 prohibits any other debt except that which has been expressly authorized. Further, he said, Section 4 prohibits the state from lending its aid and credit, and Section 5 prohibits the state from assuming the debts of any political subdivision or corporation. Mr. Keen concluded that the state’s challenging financial history at the time of enactment of Article VIII explains Ohio’s conservative approach to debt, debt authorization, and debt repayment.

Turning to the present-day approach to state debt, Mr. Keen noted that, by 22 constitutional amendments approved from 1921 to the present, Ohio voters have expressly authorized the incurrence of state debt for specific categories of capital facilities, to support research and development activities, and provide bonuses for Ohio’s war veterans. He said, currently, general obligation debt is authorized to be incurred for highways, K-12 and higher education facilities, local public works infrastructure, natural resources, parks and conservation, and third frontier and coal research and development.

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buildings, correctional and juvenile detention facilities, and cultural, historical and sports facilities; mental health and developmental disability facilities; and parks and recreational facilities.

Mr. Keen emphasized that Article VIII's framework for authorizing debt has served the state exceptionally well for more than 150 years. He said the process of asking voters to review and approve bond authorizations sets an appropriately high bar for committing the tax resources of the state over the long term, adding that Ohio's long tradition of requiring voter approval ensures that debt is proposed only for essential needs, and those needs must be explained and presented to voters for their careful consideration. He complimented voters, calling them "worthy arbiters," based on their having approved 26 and rejected 17 Article VIII debt-related ballot issues since 1900.

As a result, Mr. Keen said he would not recommend wholesale reform. He noted the credit agencies' ratings emphasize Ohio's conservative debt practice, with Ohio's credit rating being in the second highest possible category, known as "AA+," which keeps the interest rates paid on state bonds very low. Mr. Keen added that, since 1973, constitutional amendments authorizing new state debt have generally provided for general obligation security, but that the state still issues several categories of lease-appropriation debt under Section 2i, a section approved by the voters in 1968. He said that while this debt is functionally no different from the state's perspective, the subject-to-appropriation requirement lowers its credit rating to "AA" and, as a result, the state pays a higher rate of interest, typically ranging from 0.1 percent to 0.3 percent, versus its general obligation counterpart. Because of this, Mr. Keen suggested that the lease-appropriation debt authorization provisions of Section 2i for housing branches and agencies of state government, and for mental health, developmental disability, and parks and recreation facilities, be replaced with a general obligation authorization for those purposes. He estimated that, for each \$100 million of debt issued over 20 years, this change to general obligation security would save state taxpayers \$1.5 to \$4 million over the life of the debt.

In relation to the question of whether to recommend repeal or removal of inactive bond authorization sections, Mr. Keen said while he has no concern with allowing those provisions to remain, elimination of inactive sections could be viewed as helpful cleanup, noting this last occurred when Section 2a, authorizing compensation payments to World War I veterans, was repealed in 1953. He further observed that the 1970s Commission recommended the repeal or modification of additional sections within Article VIII, although only Section 12, providing for a superintendent of public works, was later repealed. Mr. Keen identified current sections for possible repeal as including 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k.

As part of his presentation, Mr. Keen proposed the committee recommend the repeal of the nine obsolete bond-authorizing provisions, plus five other provisions concerning the Commissioners of the Sinking Fund.<sup>13</sup> In addition, Mr. Keen proposed authorizing the conversion of lease authorization/revenue bonds authorized by Section 2i to general obligation bonds in order to obtain more favorable interest rates.

### *Azoff Presentation*

On April 14, 2016, Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, presented to the committee on the role of his office in relation to state debt.

In advocating that the committee recommend the use of the lease-appropriation debt rather than general obligation debt, Mr. Azoff said if the state were to default on a general obligation bond, bond holders would have the ability to bring an action to force the state to increase revenues, but lease-appropriation debt does not provide that remedy. Instead, he said, with lease-appropriation debt, the state's obligation to pay bondholders is entirely contingent on the General Assembly appropriating the funds needed to pay the debt service in its biennial budget.

Mr. Azoff noted that lease-appropriation debt provides the state flexibility in the event of a fiscal emergency. He said the state pays only slightly more interest when it borrows on a lease-appropriation basis, and that investors are “familiar and comfortable with the state's lease-appropriation credit, and are willing to loan money on that basis for a similar rate, even though they lose the ability to force the state to raise revenue to repay the debt.”

Mr. Azoff asserted that the utility of lease-appropriation debt offsets other concerns, including that general obligation debt places more of a burden on taxpayers.

### *Kauffman Presentation*

Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), spoke to the committee on April 14, 2016 regarding Article VIII.

Mr. Kauffman said OBM supports the proposal to repeal the identified inactive bond issuance sections and to protect the holders of any outstanding bonds issued under those sections by confirming the bonds continue to be secured pursuant to their original terms. He said OBM also strongly supports modernizing the lease-appropriation debt authorizations of Section 2i by replacing them with a general obligation debt authorization. He noted this change would be consistent with all GRF-backed debt authorizations passed by the voters since 1973, and would save taxpayer dollars by improving the credit rating and thus lowering the interest cost on all future issuances of debt for these purposes.

### *Additional Presentations*

In addition to the major presentations by Mr. Metcalf, Prof. Briffault, Mr. Keen, Mr. Azoff, and Mr. Kauffman, as recounted above, the committee benefited from comments by Gregory W. Stype of Squire Patton Boggs (US) LLP, who serves as bond counsel to the Ohio Public Facilities Commission; and Steven H. Steinglass, senior policy advisor to the Ohio Constitutional Modernization Commission.

On June 13, 2013, Mr. Kauffman presented an introduction to the topic of state debt, including limitation on debt, debt authorizations, and the sinking fund provisions. Mr. Kauffman was supported in his presentation by Mr. Stype.

On December 10, 2015, Mr. Steinglass pointed out that the framers of the 1851 constitution did not see the \$750,000 limit as a ceiling on borrowing, but rather as part of a constitutional framework that sought to bar incurring debt. He noted that the practice of incurring debt through specific constitutional authorizations did not begin until the 20<sup>th</sup> century. At the same meeting, Mr. Stype clarified that the \$750,000 limitation set out in Article VIII, Section 1, is not so much a limit on capital financing, as it is a limit on borrowing to contract debts to supply “casual deficits or failures in revenue, or to meet expenses not otherwise provided for.” Mr. Stype also noted that, in contrast to some other states, Ohio has long managed its cash flow needs in each fiscal year by using a “total operating fund” approach, rather than borrowing to meet cash flow needs.<sup>14</sup>

### **Discussion and Consideration**

In reviewing Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, the committee discussed whether it should recommend that the state follow the precedent established in 1953, when it repealed Article VIII, Section 2a (dealing with authorization for the issuance of bonds for the benefit of Ohio veterans who served in World War I). The committee also considered whether it is appropriate to leave these provisions in the constitution primarily as a historical reference, even if they are now obsolete, or whether it is better to clear out these provisions that are no longer of any force or effect, so as to make the constitution more readable, and by extension, more transparent.

The committee also discussed whether to recommend adoption of a new section that would recognize the state’s duty to fulfill any obligations issued under the authority of Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k that remain outstanding at the time of the repeal of those sections. This proposed new section also would acknowledge the duty to fulfill obligations issued under the authority of future debt authorization provisions. Such an amendment would prevent adverse consequences to persons holding unredeemed interest coupons and unredeemed bonds, both currently and in the future.

In addition, the committee discussed whether to recommend a new constitutional provision that would allow the General Assembly to authorize the issuance of general obligation bonds for the purposes described in the fifth paragraph of Article VIII, Section 2i. During its discussion, the committee considered whether including a new provision for this purpose would enable the state to obtain more favorable interest rates on the debt.

Finally, the committee considered the potential effect of the repeal of the noted provisions on the length of the constitution. The Ohio Constitution contains approximately 54,000 words, making it the tenth longest state constitution in the nation. The nine provisions at Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k contain approximately 12,000 words. The inclusion of new provisions addressing continuing obligations to bondholders would add no more than 1,000

words. Thus, the committee considered that these changes would shorten the constitution by more than 11,000 words, or approximately 20 percent of its current length.

## **Conclusion**

Upon consideration of the foregoing, the Finance, Taxation, and Economic Development Committee concludes that Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k are obsolete for the reason that they involve bonds that have been fully issued and paid off, or for which bonding authority has lapsed due to the passage of time, and recommends they be repealed.

As a recommendation for future action, the committee encourages the General Assembly periodically to propose to the voters the repeal of debt authorization sections of the constitution that have become obsolete. Regularly reviewing and removing debt authorization provisions that no longer are necessary would reinforce the goals of brevity and transparency in the constitution, as well as eliminating the need for extensive revision in the long term.

Further, the committee concludes that proposed new Article VIII, Section 18, should be adopted in order to require that any obligation entered into by the state under the authority of any section of Article VIII that is later repealed shall remain in full force and effect and continue to be secured in accordance with the original terms of the obligation. The committee recommends the amendment use the language proposed in Attachment A, or substantially similar language.

Finally, the committee concludes that the portion of Article VIII, Section 2i, authorizing the issuance of lease-appropriation revenue bonds for “capital improvements for mental hygiene and retardation, parks and recreation, state-supported and state-assisted institutions of higher education, including those for technical education, water pollution control and abatement, water management, and housing of branches and agencies of state government” should be modified, through the adoption of a proposed new Section 2t, allowing the General Assembly to authorize the issuance of general obligation bonds for the same purposes as to which lease-appropriation revenue bonds currently are issued under the authority of Section 2i. The committee recommends the amendment use the language proposed in Attachment B, or substantially similar language.

## **Date Issued**

After formal consideration by the Finance, Taxation, and Economic Development Committee on March 10, 2016, and April 14, 2016, the committee unanimously voted to issue this report and recommendation on April 14, 2016.

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## Endnotes

<sup>1</sup> Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 233 (2<sup>nd</sup> prtg. 2011).

Ohio was not unique in facing the economic consequences of overspending on transportation infrastructure, nor in adopting constitutional limitations on state debt as a result. By 1860, 19 states had constitutional debt limitations, and by the early 20<sup>th</sup> Century, nearly all state constitutions contained such limitations. Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 917, citing B. U. Ratchford, *American State Debts* (1941); Alberta M. Sbragia, *Debt Wish, Entrepreneurial Cities, U.S. Federalism, and Economic Development* (1996). See also Richard Briffault, “State and Local Finance,” in *State Constitutions for the Twenty-first Century* (G. Alan Tarr & Robert F. Williams, eds. New York: SUNY Press. 2006); Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 Wis. L.Rev. 1301 (1991).

For more on the history of the 1850-51 Constitutional Convention in relation to the state debt provisions in Article VIII, see David M. Gold, *Public Aid to Private Enterprise Under the Ohio Constitution: Sections 4, 6, and 13 of Article VIII in Historical Perspective*, 16 U. Tol. L.Rev. 405 (1984-85).

<sup>2</sup> The text of repealed Section 2a may be found at: Page’s Ohio Rev. Code Ann., 518 (Carl L. Meier & John L. Mason, eds. 1953).

<sup>3</sup> Steinglass & Scarselli, *supra* at 242.

<sup>4</sup> *Id.* at 248: “Despite the title given to this section by the secretary of state, this section has nothing to do with securing funds for highway construction. In fact, section 2e specifically excludes ‘highways’ from the projects that can be funded.”

<sup>5</sup> For an example of a provision pledging the “full faith and credit” of the state, see Oh. Const. art. VIII § 2n(C) (“Obligations issued under this section are general obligations of the state. The full faith and credit, revenue, and taxing power of the state shall be pledged to the payment of debt service on those outstanding obligations as it becomes due.”); See also *State ex. rel. Pub. Institutional Bldg. Auth. v. Griffith*, 135 Ohio St. 604, 22 N.E.2d 200 (1939).

<sup>6</sup> See, e.g., Legislative Service Commission, *A Guidebook for Ohio Legislators*, Ch. 8, “The Ohio Budget Process,” (14<sup>th</sup> ed. 2015-16), <http://www.lsc.ohio.gov/guidebook/> (last visited Feb. 8, 2016).

<sup>7</sup> Ohio Constitutional Revision Commission Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt (Dec. 31, 1972), <http://www.lsc.ohio.gov/ocrc/recommendations%20pt2%20state%20debt.pdf> (last visited Feb. 5, 2016).

<sup>8</sup> *Id.* at 23-31.

<sup>9</sup> *Id.* at 11, 13.

<sup>10</sup> Ohio Constitutional Revision Commission Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt, 42-43 (Dec. 31, 1972), <http://www.lsc.ohio.gov/ocrc/recommendations%20pt2%20state%20debt.pdf> (last visited Feb. 5, 2016).

<sup>11</sup> *Id.* That provision reads as follows:

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All obligations of the state issued under authority of any section of Article VIII of the Constitution of Ohio repealed by this amendment, or under authority of any law enacted pursuant to or validated by any such section, which obligations are outstanding on the date of the adoption of this amendment, shall remain valid and enforceable obligations of the state according to their terms and conditions. Any law enacted pursuant to or validated by any section of Article VIII of this Constitution repealed by this amendment shall remain valid and enforceable as if such section had not been repealed. The repeal of such sections and the adoption of this amendment shall not be deemed to impair, diminish, or restrict the rights or benefits of any holder or owner of any such obligations, nor any liability, covenant, or pledge of the state with respect thereto, including those for the levy and collection of taxes, the maintenance of funds, and the appropriation and application of money.

<sup>12</sup> See <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1970-1979OfficialElectionResults/GenElect110877.aspx> (lasted visited March 28, 2016); and <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited March 28, 2016).

Meanwhile, voters have approved multiple constitutional amendments authorizing the issuance of state debt for the purposes of subsidizing low cost housing (Section 14, approved Nov. 2, 1982; Section 16, approved Nov. 6, 1990); financing coal research (Section 15, approved Nov. 5, 1985); financing local government efforts to improve roads, water, sewer, and other infrastructure (Section 2k, approved Nov. 3, 1987); improving parks, conservation and natural resources (Section 2l, approved Nov. 2, 1993); funding public works and highways (Section 2m, approved Nov. 7, 1995); funding school facilities (Section 2n, Section 17, approved Nov. 2, 1999); funding environmental conservation projects (Section 2o, approved Nov. 7, 2000; Section 2q, approved Nov. 4, 2008); creating jobs and stimulating economic growth (Section 2p, approved Nov. 8, 2005; amendment approved May 4, 2010); compensating veterans of the Persian Gulf, Afghanistan and Iraq Conflicts (Section 2r, approved Nov. 3, 2009); and for capital improvements (Section 2s, approved May 6, 2014). Source: Ohio Constitution Law and History Table of Proposed Amendments, Cleveland-Marshall College of Law Library, available at: <http://guides.law.csuohio.edu/ohioconstitution/ohioconstitutionamendmentstable> (last visited March 28, 2016).

<sup>13</sup> Although Mr. Keen proposed a repeal of sections of Article VIII related to the Sinking Fund, this report and recommendation does not address the Sinking Fund provisions. The committee is issuing a separate report and recommendation addressing constitutional provisions related to the Sinking Fund.

<sup>14</sup> R.C. 126.06 provides:

The total operating fund consists of all funds in the state treasury except the auto registration distribution fund, local motor vehicle license tax fund, development bond retirement fund, facilities establishment fund, gasoline excise tax fund, higher education improvement fund, highway improvement bond retirement fund, highway capital improvement fund, improvements bond retirement fund, mental health facilities improvement fund, parks and recreation improvement fund, public improvements bond retirement fund, school district income tax fund, state agency facilities improvement fund, state and local government highway distribution fund, state highway safety fund, Vietnam conflict compensation fund, any other fund determined by the director of budget and management to be a bond fund or bond retirement fund, and such portion of the highway operating fund as is determined by the director of budget and management and the director of transportation to be restricted by Section 5a of Article XII, Ohio Constitution.

When determining the availability of money in the total operating fund to pay claims chargeable to a fund contained within the total operating fund, the director of budget and management shall use the same procedures and criteria the director employs in determining the availability of money in a fund contained within the total operating fund. The director may establish limits on the negative cash balance of the general revenue fund within the total operating fund, but in no case shall the negative cash balance of the general revenue fund exceed ten per cent of the total revenue of the general revenue fund in the preceding fiscal year.

## ATTACHMENT A

### ARTICLE VIII

Section 18. If any section of Article VIII that authorizes the issuance of debt or other obligation is repealed, any outstanding debt or other obligation issued under authority of the section prior to its repeal shall remain in full force and effect and continue to be secured in accordance with its original terms.

## ATTACHMENT B

### ARTICLE VIII

Section 2t. (A) The General Assembly may provide by law, subject to the limitations of and in accordance with this section, for the issuance of bonds and other obligations of the state for the purpose of paying costs for facilities for mental health and developmental disabilities, parks and recreation, and housing of branches and agencies of state government, and to refund obligations previously issued under the authority of the fifth paragraph of Section 2i of Article VIII for these purposes (which Section 2i referred to “mental health and developmental disabilities” as “mental hygiene and retardation”).

(B) Each obligation issued under division (A) of section shall mature no later than the thirty-first day of December of the twenty-fifth calendar year after its issuance, except that obligations issued to refund other obligations shall mature not later than the thirty-first day of December of the twenty-fifth calendar year after the year in which the original obligation to pay was issued or entered into.

(C) Obligations issued under division (A) of this section shall be general obligations of the state. The full faith and credit, revenue, and taxing power of the state shall be pledged to the payment of debt service on those outstanding obligations as it becomes due, and bond retirement fund provisions shall be made for payment of that debt service. Provision shall be made by law for the sufficiency and appropriation, for purposes of paying debt service, of excises, taxes, and revenues so pledged or committed to debt service, and for covenants to continue the levy, collection, and application of sufficient excises, taxes, and revenues to the extent needed for that purpose. Notwithstanding section 22 of Article II of this constitution, no further act of

appropriation shall be necessary for that purpose. The obligations and provisions for the payment of debt service on them are not subject to Sections 5, 6, and 11 of Article XII of this constitution. Moneys referred to in Section 5a of Article XII of this constitution may not be pledged or used for the payment of that debt service.

(D) In the case of the issuance of any of those obligations as bond anticipation notes, provision shall be made by law or in the bond or note proceedings for the establishment and maintenance, during the period the notes are outstanding, of special funds into which there shall be paid, from the sources authorized for payment of the bonds anticipated, the amount that would have been sufficient to pay the principal that would have been payable on those bonds during that period if bonds maturing serially in each year over the maximum period of maturity referred to in division (B) of this section had been issued without the prior issuance of the notes. The special funds and investment income on them shall be used solely for the payment of principal of those notes or of the bonds anticipated.

(E) Obligations issued under, or pursuant to, this section, their transfer, and the principal, interest, interest equivalent, and other income or accreted amounts on them, including any profit made on their sale, exchange, or other disposition, shall at all times be free from taxation within the state.

(F) This section shall be implemented in the manner and to the extent provided by the General Assembly by law, including provision for the procedure for incurring, refunding, retiring, and evidencing obligations referred to in this section. The total principal amount of obligations issued under division (A) shall be determined by the General Assembly, subject to the limitation provided for in section 17 of this article.

(G) The authorizations in this section are in addition to, cumulative with, and not a limitation on, authorizations contained in other sections of this article; are in addition to, cumulative with, and not a limitation on, the authority of the General Assembly under other provisions of this constitution; and do not impair any law previously enacted by the General Assembly.

(H) As used in this section:

(1) “Costs” includes, without limitation, the costs of acquisition, construction, improvement, expansion, planning, and equipping.

(2) “Debt service” means the principal and interest and other accreted amounts payable on the obligations referred to.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### OHIO CONSTITUTION ARTICLE VIII SECTIONS 2l, 2m, 2n, 2o, 2p, 2q, 2r, AND 2s

#### ADDITIONAL AUTHORIZATION OF DEBT OBLIGATIONS

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The Finance, Taxation, and Economic Development Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s of Article VIII of the Ohio Constitution concerning public debt and public works. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s of Article VIII dealing with authorization of debt obligations be retained in their present form.*

#### **Background**

Article VIII deals with public debt and public works, and was adopted as part of the 1851 constitution.

Delegates to the 1851 Constitutional Convention sought to limit the actions of the General Assembly in obligating the financial interests of the state so as to avoid problems that had arisen when the state extended its credit to private interests and to prevent another debt crisis, such as the one resulting from the construction of the state's transportation system.<sup>1</sup> As proposed by delegates to the 1851 Constitutional Convention, Article VIII initially barred the state from incurring debt in excess of \$750,000, except in limited circumstances, primarily involving cash flow and military invasions and other emergencies. *See* Article VIII, Sections 1, 2, and 3.

From the adoption of the 1851 Constitution through 1947, the voters of the state approved just one constitutional provision authorizing the issuance of additional debt. That occurred in 1921, when the voters approved section 2a authorizing debt for establishing a system of adjusted compensation for Ohio veterans of World War I.<sup>2</sup> From 1947 through 1987, voters subsequently adopted other constitutional provisions authorizing the issuance of state debt for purposes that

included compensation to veterans of World War II and the Korean and Vietnam Conflicts; construction of the state highway system, public buildings, and local public infrastructure; and the preservation and conservation of natural resources and the establishment of state recreational areas. These sections, enumerated as Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, through a separate report and recommendation, have been recommended for repeal based on their obsolescence.

Beginning with Section 2l in 1993, voters approved eight additional constitutional provisions within Article VIII authorizing the creation of debt, which are Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s. In contrast to Sections 2b, 2c, 2d, 2e, 2f, 2h, 2j, and 2k, the sections covered in this report and recommendation do not involve bonds that have been fully issued and paid off, or their bonding authority has not yet lapsed.<sup>3</sup>

Section 2l authorizes the issuance of bonds and other obligations to finance the costs of capital improvements to state and local parks, land and water recreation facilities, soil and water restoration and protection, land and water management, fish and wildlife resource management, and other projects that enhance the use and enjoyment of natural resources. Adopted in 1993, the provision contains a statement of purpose that the capital improvements are necessary and appropriate to improve the quality of life of the people of Ohio, to ensure public health, safety and welfare, and to enhance employment opportunities. The section permits the state to support, by grants or contributions, capital improvements of this nature that are undertaken by local government entities. Significantly, the section exempts the bonds issued pursuant to its authority from operation of other constitutional provisions that strictly limit debt, or that limit the state's ability to enter into cooperative financial arrangements with private enterprise or local government.

Section 2m similarly provides for the issuance of bonds and other obligations to finance public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities, and for highway capital improvements. The section defines "public infrastructure capital improvements" as being limited to roads and bridges, wastewater treatment and water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including costs related to real property, facilities, and equipment. Adopted in 1995, the section updates and modifies Section 2k, which had limited debt for public infrastructure to not more than \$120 million per calendar year, with the total debt not to exceed \$1.2 billion and a requirement that all obligations must mature within thirty years. Under Section 2m, the state is authorized to issue an additional \$1.2 billion, with no infrastructure obligations to be issued under Section 2m until at least \$1.2 billion aggregate principal amount of obligations have been issued pursuant to Section 2k. The provision also requires the use, where practicable, of Ohio products, materials, services, and labor for projects financed under Section 2m.

Section 2n authorizes debt issuance for the purpose of funding public school facilities for both K-12 and for state-supported and state-assisted institutions of higher education. Adopted in 1999, Section 2n also provides that net state lottery proceeds may be pledged or used to pay the debt service on bonds issued under the provision for K-12 educational purposes. As acknowledged by the Ohio Supreme Court in *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-

1343, 754 N.E.2d 1184 (*DeRolph III*), Section 2n enhanced the state’s ability to issue bonds to fund schools, and was proposed and adopted subsequent to Court’s decision in *DeRolph v. State*, 78 Ohio St.3d 193, 208, 1997-Ohio-84, 677 N.E.2d 733, 744 (*DeRolph I*).<sup>4</sup> In *DeRolph I*, a majority of the Court concluded that state funding of schools is not adequate if school districts lack sufficient funds to provide a safe and healthy learning environment. Division (F) of Section 2n limits the total principal amount of obligations issued to an amount determined by the General Assembly, subject to the limitation provided in Section 17, which was adopted by voters on the same ballot. Article VIII, Section 17 provides, in part, that direct obligations of the state may not be issued if the amount needed in a future fiscal year to service the direct obligation debt exceeds five percent of the total estimated state revenue for the issuing year. Thus, the amount of debt issued under Section 2n for a given year is limited to five percent of the total estimated revenues of the state from the General Revenue Fund and from net state lottery proceeds for that year.

Section 2o, adopted in 2000, authorizes bonds for environmental, conservation, preservation, and revitalization projects in order to protect water and natural resources, preserve natural areas and farmlands, improve urban areas, clean up pollution, and enhance the use and enjoyment of natural areas and resources. Under the provision, while the full faith and credit of the state is pledged to conservation projects, it is not pledged to revitalization projects, the bonds for which are designated to be repaid from “all or such portion of designated revenues and receipts of the state as the General Assembly authorizes.” Section 2o(B)(2). The section requires the General Assembly to provide by law for limitations on the granting or lending of proceeds of these obligations to parties to pay costs of cleanup or remediation of contamination for which they are determined to be responsible. The section allows the state to provide grants, loans, or other support to finance projects undertaken by local government, or by non-profit organizations at the direction of local government, exempting such obligations from application of constitutional sections that limit or prohibit such arrangements. As with Section 2n, Section 17’s five percent limitation on the amount of debt issued applies.

Section 2p relates to bonds for economic and educational purposes and local government projects, specifically for the purpose of capital improvements to infrastructure, and for research and development in support of Ohio industry, commerce, and business. Adopted in 2005, the section was amended in 2010 to expand the Third Frontier program, an initiative designed to encourage state economic growth through grants and loans to private industry and educational institutions. The 2010 amendment continued the funding approved in 2005. The section allows the General Assembly to provide by law for the issuance of general obligation bonds and other obligations for the purpose of financing related projects, with prescribed limitations on the dollar amount to be issued in fulfillment of the purposes of the provision.

Section 2q, adopted in 2008 and titled the “Clean Ohio Fund Amendment,” authorizes the General Assembly to issue up to \$200 million in bonds for conservation and preservation of natural areas, farmlands, park and recreation facilities, and to support other natural areas and natural resource management projects. The provision also authorizes the issuance of bonds up to \$200 million for environmental revitalization and cleanup projects. Section 2q limits the amount borrowed in any one fiscal year to \$50 million, plus the principal amount of obligations that, in any prior fiscal year, could have been issued but were not.

Section 2r was adopted in 2009 to provide compensation to the veterans of the Persian Gulf, Afghanistan, and Iraq Conflicts, and their survivors. To be eligible for compensation, veterans had to have served on active duty in one or more of those locations during the specified time periods. Unlike previous war veteran compensation amendments, Section 2r authorizes the Public Facilities Commission, rather than the Sinking Fund Commission, to issue and sell bonds and other obligations to fund payment, pledging the state's full faith and credit, revenue, and taxing power to pay the debt service. Additionally, the section gives responsibility to the Ohio Department of Veterans Services for paying compensation and adopting rules regarding amounts, residency, or other relevant factors, in accordance with Revised Code Chapter 119.

Section 2s, adopted in 2014, authorized the General Assembly to issue bonds to finance public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities, with the improvements being limited to roads and bridges, wastewater treatment and water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities. With broad, nearly unanimous bipartisan support in the General Assembly, the ballot measure was submitted to voters on May 6, 2014, and was approved by a margin of 65.11 percent to 34.89 percent.<sup>5</sup>

### **Amendments, Proposed Amendments, and Other Review**

Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, are of relatively recent adoption and have not been amended.

### **Litigation Involving the Provisions**

There has been no litigation involving Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, or 2s.

The Ohio Supreme Court generally has upheld the adoption of constitutionally-based exceptions to the limitations on incurring debt. *See, e.g., Kasch v. Miller*, 104 Ohio St. 281, 135 N.E. 813 (1922), at syllabus (where statute provides that an improvement is to be paid for by the issue and sale of state bonds, with the principal and interest to be paid by revenues derived from the improvement, a state debt is not incurred within the purview of the state constitution).

### **Presentations and Resources Considered**

#### *Metcalf Presentation*

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the committee on May 8, 2014, March 12, 2015, and March 10, 2016. In addition to reviewing the history of Article VIII, including the \$750,000 limitation in Section 1, Mr. Metcalf noted the difficulties inherent in needing to go to the ballot for approval of additional borrowing. Although he identified areas of possible reform, Mr. Metcalf expressed that the state framework for authorizing debt has served the state exceptionally well.

As a supplement to an increased overall debt limitation, Mr. Metcalf pointed to the adoption in 1999 of Article VIII, Section 17, which contains a sliding scale under which the total debt service of the state is limited to five percent of the total estimated revenues of the state for the general revenue fund. He also pointed out that this approach would not tie borrowing to specific purposes, thus giving the General Assembly flexibility as to how to use the public debt.

### *Briffault Presentation*

On June 4, 2015, Professor Richard Briffault of the Columbia University Law School, provided ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future.

Describing the different ways states have dealt with the subject of state debt, Prof. Briffault recognized some states' approach of using a constitutional ban on debt. While those limits are considered low today, they were not necessarily low at the time of adoption. Prof. Briffault noted that no state has learned to live without debt, with the result that, if the state constitution prohibits debt, states will amend their constitutions to allow it. The real debt limit then becomes the complicated nature of enacting a constitutional amendment, according to Prof. Briffault.

### *Keen Presentation*

On October 8, 2015, Timothy S. Keen, director of the Ohio Office of Budget and Management, provided an in-depth analysis of the history and purpose of Article VIII, as well as suggestions for modernizing its debt provisions.

Mr. Keen noted that, by 22 constitutional amendments approved from 1921 to the present, Ohio voters have expressly authorized the incurrence of state debt for specific categories of capital facilities, to support research and development activities, and provide bonuses for Ohio's war veterans. He said, currently, general obligation debt is authorized to be incurred for highways, K-12 and higher education facilities, local public works infrastructure, natural resources, parks and conservation, and third frontier and coal research and development.

Mr. Keen emphasized that Article VIII's framework for authorizing debt has served the state exceptionally well for more than 150 years. He said the process of asking voters to review and approve bond authorizations sets an appropriately high bar for committing the tax resources of the state over the long term, adding that Ohio's long tradition of requiring voter approval ensures that debt is proposed only for essential needs, and those needs must be explained and presented to voters for their careful consideration. He complimented voters, calling them "worthy arbiters," based on their having approved 26 and rejected 17 Article VIII debt-related ballot issues since 1900.

## **Discussion and Consideration**

In reviewing Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, the committee discussed whether the provisions should be retained because their bonding authority remains current, and for the reason that the bonds issued pursuant to their authority have not been paid off. The

committee also considered, but left for future resolution, the concept of a constitutional amendment allowing for the automatic retirement of bond authority provisions once they become obsolete, so as to relieve the need to go to the ballot to repeal expired provisions.

## Conclusion

Upon consideration of the foregoing, the Finance, Taxation, and Economic Development Committee concludes that Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s do not involve bonds that have been fully issued and paid off, and their bonding authority has not lapsed due to the passage of time. Therefore, it is necessary to retain them in their present form, and so the committee recommends no change to these provisions.

## Date Issued

After formal consideration by the Finance, Taxation, and Economic Development Committee on November 10, 2016, the committee unanimously voted to issue this report and recommendation on November 10, 2016.

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## Endnotes

<sup>1</sup> Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 233 (2<sup>nd</sup> prt. 2011). Ohio was not unique in facing the economic consequences of overspending on transportation infrastructure, nor in adopting constitutional limitations on state debt as a result. By 1860, 19 states had constitutional debt limitations, and by the early 20<sup>th</sup> Century, nearly all state constitutions contained such limitations. Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 917, citing B. U. Ratchford, *American State Debts* (1941); Alberta M. Sbragia, *Debt Wish, Entrepreneurial Cities, U.S. Federalism, and Economic Development* (1996). See also Richard Briffault, "State and Local Finance," in *State Constitutions for the Twenty-first Century* (G. Alan Tarr & Robert F. Williams, eds. New York: SUNY Press. 2006); Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 Wis. L.Rev. 1301 (1991).

For more on the history of the 1850-51 Constitutional Convention in relation to the state debt provisions in Article VIII, see David M. Gold, *Public Aid to Private Enterprise Under the Ohio Constitution: Sections 4, 6, and 13 of Article VIII in Historical Perspective*, 16 U. Tol. L.Rev. 405 (1984-85).

<sup>2</sup> Section 2a was later repealed in 1953. The text of repealed Section 2a may be found at: Page's Ohio Rev. Code Ann., 518 (Carl L. Meier & John L. Mason, eds. 1953).

<sup>3</sup> The committee's review of Section 2p is not included in this report and recommendation, but will be included in the committee's consideration of Article VIII, Sections 4, 5, and 6.

<sup>4</sup> In *DeRolph III*, the Court observed:

One recent development with significant potential is that the state has enhanced its ability to issue bonds to pay part of the state share of the costs of local projects. In *DeRolph II*, 89 Ohio St. 3d at 14, 728 N.E.2d at 1004, this court noted that Senate Joint Resolution No. 1 placed on the November 2, 1999 ballot a proposal, approved by Ohio voters, to amend the Ohio Constitution "to

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allow the state to issue general obligation bonds to pay for school facilities." See, principally, Section 2n, Article VIII, Ohio Constitution; see, also, 1997 Am.Sub.S.B. No. 102, Section 8, 147 Ohio Laws, Part IV, 7417. The deposition of Randall A. Fischer, executive director of the Ohio School Facilities Commission, reveals that these bonds are being issued. However, it is unclear from the record before us how effectively the bonds are being utilized and whether the state has fully taken advantage of the opportunities presented by bond issuance. Our state could benefit greatly if our legislators were able to exercise additional vision to put in place plans that would make bonds a more efficacious method of paying for school facilities.

*DeRolph III*, 93 Ohio St.3d at 368, 754 N.E.2d at 1235.

<sup>5</sup> See <http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2014Results.aspx> (last visited May 25, 2016).



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### OHIO CONSTITUTION ARTICLE VIII SECTIONS 7, 8, 9, 10, AND 11

#### THE SINKING FUND AND THE SINKING FUND COMMISSION

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The Finance, Taxation, and Economic Development Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VIII of the Ohio Constitution concerning the Sinking Fund and the Sinking Fund Commission. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that Sections 7 through 11 of Article VIII dealing with the Sinking Fund and the duties of the Sinking Fund Commission be repealed for the reason that the state no longer utilizes a fund identified as "the Sinking Fund," and the duties of the Sinking Fund Commission are being performed by other state officers and agencies. These provisions include Section 7, creating the Sinking Fund; Section 8, listing the members of the Sinking Fund Commission; and Sections 9, 10, and 11, outlining the duties of the Sinking Fund Commission.*

#### **Background**

Article VIII deals with public debt and public works, and was adopted as part of the 1851 constitution.

In addition to placing a limitation on the actions of the General Assembly in incurring debt, through the adoption of Article VIII, Sections 1, 2, and 3, delegates to the 1851 Constitutional Convention also adopted five sections designed to assure that any debt that was incurred by the state would be paid off responsibly through the creation and operation of a Sinking Fund. The use of such a fund was a popular method of paying off debt by the states in the 19<sup>th</sup> century.<sup>1</sup> The five sections that directly relate to the Sinking Fund include Sections 7, 8, 9, 10, and 11.

Section 7 creates the “Sinking Fund” for the purpose of paying accruing interest on public debt. This section provides that the fund will annually reduce the principal by a sum of not less than \$100,000, increased yearly by compounding at six percent per year. The source of the fund is described as the net annual income of the public works and stocks owned by the state, any other funds or resources provided by law, and further sums to be raised by taxation as may be required. Section 7 provides as follows:

The faith of the state being pledged for the payment of its public debt, in order to provide therefor, there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and, annually, to reduce the principal thereof, by a sum not less than one hundred thousand dollars, increased yearly, and each and every year, by compounding, at the rate of six per cent per annum. The said sinking fund shall consist, of the net annual income of the public works and stocks owned by the state, of any other funds or resources that are, or may be, provided by law, and of such further sum, to be raised by taxation, as may be required for the purposes aforesaid.

Section 8 creates a supervisory body known as “The Commissioners of the Sinking Fund,” consisting of the governor, the treasurer of state, the auditor of state, the secretary of state, and the attorney general. Although originally part of the 1851 constitution, the provision was amended in 1947 to add the governor and state treasurer to the board.<sup>2</sup> Section 8 reads:

The governor, treasurer of state, auditor of state, secretary of state, and attorney general, are hereby created a board of commissioners, to be styled, “The Commissioners of the Sinking Fund”.

Section 9 prescribes that a biennial report shall be issued by the commissioners before each session of the General Assembly. The report, which is to include information about the amount in the fund from all sources except taxation, is to be provided to the governor, who then transmits the information to the General Assembly. Relying on this information, the General Assembly is directed to make all necessary provision for raising and disbursing the fund in pursuance of the provisions of Article VIII. Section 9 states:

The commissioners of the sinking fund shall, immediately preceding each regular session of the general assembly, make an estimate of the probable amount of the fund, provided for in the seventh section of this article, from all sources except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, to the governor, who shall transmit the same with his regular message, to the general assembly; and the general assembly shall make all necessary provision for raising and disbursing said sinking fund, in pursuance of the provisions of this article.

Section 10 states that the commissioners shall apply the fund, along with other moneys appropriated by the General Assembly, to the payment of interest as due, as well as to the redemption of the principal of the public debt. Section 10 excludes state school and trust funds from this directive. Section 10 provides:

It shall be the duty of the said commissioners faithfully to apply said fund, together with all moneys that may be, by the general assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the state, excepting only, the school and trust funds held by the state.

Section 11 provides that the commissioners shall issue a semi-annual report describing the proceedings of the Sinking Fund Commission, to be published by the governor and communicated to the General Assembly. This report is in addition to the biennial report required by Section 9. Pursuant to Section 11:

The said commissioners shall, semi-annually, make a full and detailed report of their proceedings to the governor, who shall, immediately, cause the same to be published, and shall also communicate the same to the general assembly, forthwith, if it be in session, and if not, then at its first session after such report shall be made.

### **Amendments, Proposed Amendments, and Other Review**

The five provisions concerning the Sinking Fund Commission were adopted in 1851, with their only amendment occurring in 1947, when Article VIII, Section 8, was adopted to add the governor and the state treasurer to the commission.<sup>3</sup> Therefore, the commission now includes all five statewide officeholders.

The Ohio Constitutional Revision Commission (1970s Commission) studied Article VIII in depth and made extensive recommendations concerning how the state incurs debt.<sup>4</sup> The 1970s Commission recommended the repeal of unnecessary provisions concerning the Sinking Fund and the Commissioners of the Sinking Fund, explaining:

The Commission proposes the repeal of Sections 7 through 11 of Article VIII, which deal with the Commissioners of the Sinking Fund and their duties, and the Sinking Fund itself. Whatever justification these sections might have had at one time, in the Commission's view they no longer serve a useful constitutional purpose. The very concept of the sinking fund, in which large sums of money are accumulated until they are needed to pay bonds at maturity, has fallen into disfavor. Today, the bond which is the norm for public financing is the serial bond: "State and local debt nowadays is almost always in serial form, that is, when the debt is incurred, provision is made for annual retirement of the principal, so that the annual carrying charge for a twenty-year issue includes a sum sufficient to redeem, say, one-twentieth of the principal, as well as a sum of interest." [citing James A. Maxwell, *Financing State and Local Governments*, rev. ed. (Washington, The Brookings Institution, 1969) p. 185.] However, in suggesting the deletion of sections relating to the Sinking Fund, the Commission is not suggesting that the General Assembly should not have the power to establish either a sinking fund or a sinking fund commission, should it desire to

do so, and hence Section 1 of the proposed Article VIII would provide ample authority to do so. The deletion of these sections is recommended only because the Commission believes that these sections are not needed in the Constitution.<sup>5</sup>

In November 1977, the General Assembly submitted a ballot issue to the voters that, among other changes, proposed repealing Sections 7, 9, and 10 dealing with the Sinking Fund. However, voters rejected Issue 4 by a margin of 72.5 percent to 27.5 percent, with an over one million vote difference.<sup>6</sup>

### **Litigation Involving the Provisions**

There has been no litigation directly related to Sections 7, 8, 9, 10, and 11.

### **Presentations and Resources Considered**

#### *Metcalf Presentations*

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the committee on May 8, 2014, March 12, 2015, and March 10, 2016. In addition to reviewing the history of Article VIII, including the \$750,000 debt limitation in Section 1, Mr. Metcalf addressed the role of the Sinking Fund Commission. Originally adopted as a safeguard, he said the commission is no longer playing an active role in managing the payment of the debt. In fact, Mr. Metcalf noted that the commission has not been an active issuer of state debt since 2001. Mr. Metcalf suggested the state should continue to involve the five statewide executive officeholders in the debt issuance process, further opining that the constitutional references to the Sinking Fund should be replaced with references to the state treasurer, or to the Ohio Public Facilities Commission, which currently issues most of the state's general obligation debt and is comprised of those five statewide officeholders and the director of the Office of Budget and Management (OBM).<sup>7</sup>

#### *Keen Presentation*

On October 8, 2015, Timothy S. Keen, director of OBM, provided an in-depth analysis of the history and purpose of Article VIII, as well as suggestions for modernizing its debt provisions.

For the purpose of improving efficiency, Mr. Keen advocated eliminating Sections 7 through 11. He noted that the Commissioners of the Sinking Fund – originally consisting of the attorney general, auditor and secretary of state – were established in 1851 to administer a fund that would pay-off, or “sink,” the state's then-existing canal and railroad debt, and to report their activities and progress to the governor and General Assembly. Over the years, the duties of the commissioners expanded to include administering and issuing many types of state debt, with the governor and treasurer being added to the commission in 1947. In the 1950s, new state bond programs began to use dedicated bond service funds separate from the sinking fund, with debt service payments effectuated by the treasurer and OBM. Then, in 2001, the General Assembly transferred bond issuance authority from the commissioners to the Ohio Public Facilities Commission. As a result of these changes, all of the functions historically performed by the

Commissioners of the Sinking Fund are now performed by other state entities, indicating that the sinking fund provisions of Article VIII are viable candidates for repeal.

#### *Azoff Presentation*

Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, presented to the committee on April 14, 2016 regarding the role of his office in relation to state debt.

Among the changes recommended for Article VIII, Mr. Azoff proposed the reference to the sinking fund in Section 2 should be changed to the word “state.” He said this recommendation is based on the fact that a true “sinking fund” no longer exists. Mr. Azoff further indicated his office supports the repeal of Sections 7 through 11 of Article VIII for the reason that the state no longer utilizes a sinking fund, with the duties of the Sinking Fund Commission now being performed by the treasurer’s office. However, Mr. Azoff expressed the concern that removal of Sections 7 through 11 without replacement language clarifying who should perform those same duties would be detrimental to the interests of public accountability. He expressed that the committee’s review provides the opportunity to recommend constitutional amendments that would reflect current statutory procedures.

In this regard, Mr. Azoff described that his office performs the ongoing roles and responsibilities of the Sinking Fund Commission, including paying debt service on the state’s general obligation debt from the Commissioners of the Sinking Fund’s designated bond service funds, and fulfilling the treasurer’s reporting role as a member of the Commission of the Sinking Fund. He noted that the Office of Debt Management’s operating expenses are funded through the Commissioners of the Sinking Fund GRF line item in the Treasurer of State’s operating budget. As a result, Mr. Azoff urged the committee to recommend the retention of constitutional authorization for the performance of the Sinking Fund Commissioners’ duties.

#### *Kauffman Presentation*

On April 14, 2016, Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), appeared before the committee to provide comment related to Article VIII.

Mr. Kauffman said OBM supports the repeal of Sections 7 through 11 of Article VIII, because all of the functions historically performed by the Commissioners of the Sinking Fund are now defunct or, in the case of the Sinking Fund report required under Section 11, performed by other state entities. Mr. Kauffman reiterated Mr. Keen’s suggestion that the debt reporting requirement be replaced by a new provision that would assign necessary debt reporting functions to the state treasurer.

Addressing a suggestion by Seth Metcalf, deputy treasurer, that removing the Sinking Fund would compromise public accountability in the debt issuance process, Mr. Kauffman said OBM does not share that concern, instead acknowledging that the interests of the public are protected by the fact that citizens always must approve debt authorization by voting for constitutional amendments. He noted multiple steps that protect public participation, among them that voters

must approve a ballot issue, that the General Assembly’s legislative process welcomes public comment, and that the PFC holds open meetings for the purpose of passing bond issuance resolutions.

Mr. Kauffman said these multiple opportunities for consideration of public comment protect the interests of public accountability, adding that unnecessary changes would risk creating uncertainty and confusion in the municipal bond market.

Finally, Mr. Kauffman said OBM supports the proposal to retain Article VIII, Sections 1 and 3 in their current form, and to revise Section 2 only to eliminate what would be an outdated reference to the Commissioners of the Sinking Fund.

### **Discussion and Consideration**

In reviewing the provisions relating to the Sinking Fund and the Commissioners of the Sinking Fund, the committee considered whether the provisions are obsolete for the reason that the widespread use of bonds for the purpose of raising funds, and the transfer of the duties of the commissioners to other state agencies, has left the Sinking Fund Commission with little to do. In considering this concern, the committee found it persuasive that the commissioners have not met since 2008, and that many of the duties assigned to the commissioners are now performed by other state officers and agencies.

The committee also considered language in Article VIII, Section 2 that refers to the Sinking Fund as a source for paying down the “present outstanding indebtedness of the state.” Based on its preference to eliminate the Sinking Fund and related provisions, the committee considered whether it would be appropriate to recommend removal of the reference to the Sinking Fund, replacing it with a generic phrase allowing the state to pay state indebtedness.

### **Conclusion**

Upon consideration of the foregoing, the Finance, Taxation, and Economic Development Committee concludes that Sections 7, 8, 9, 10, and 11 of Article VIII (dealing with the Sinking Fund and the duties of the Sinking Fund Commission) are obsolete for the reason that the purpose of the Sinking Fund and duties of the Sinking Fund Commission have been replaced by other state entities primarily through (i) authorizations contained in constitutional amendments approved by the electors of the state; and (ii) by statutory enactment made pursuant to the authorizations contained in these subsequent constitutional amendments. Thus, the committee recommends these sections be repealed.

As further described in the committee’s report and recommendation relating to Article VIII, Sections 1, 2, and 3, titled “State Debt,” the committee also recommends that Section 2 be revised to eliminate the reference to the Sinking Fund.<sup>8</sup>

## Date Issued

After formal consideration by the Finance, Taxation, and Economic Development Committee on April 14, 2016, and May 12, 2016, the committee unanimously voted to issue this report and recommendation on May 12, 2016.

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## Endnotes

<sup>1</sup> See, e.g., Henry C. Adams, *Public Debts: An Essay in the Science of Finance* 384 (New York: D. Appleton 1890). For a discussion of the history of the use of the sinking fund, see Donald F. Swanson and Andrew P. Trout, *Alexander Hamilton's Hidden Sinking Fund*, 49 *William and Mary Quarterly* 108 (1992).

<sup>2</sup> Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 275 (2<sup>nd</sup> prtg. 2011).

<sup>3</sup> *Id.* at 275, app. B.

<sup>4</sup> Ohio Constitutional Revision Commission Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt (Dec. 31, 1972), <http://www.lsc.ohio.gov/ocrc/recommendations%20pt2%20state%20debt.pdf> (last visited Feb. 5, 2016).

<sup>5</sup> *Id.* at 39-40.

<sup>6</sup> Steinglass & Scarselli, *supra* at app. B.

On the November 8, 1977 ballot, Issue 4 stated:

“PROPOSED CONSTITUTIONAL AMENDMENT

To adopt Section 1 of Article VIII and repeal Sections 1, 2, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 3, 7, 9, and 10 of Article VIII and Section 6 of Article XII of the Constitution of Ohio

1. To repeal the general state constitutional debt limit of \$750,000 and replace it with authority to incur debt for capital improvements by a two-thirds majority vote of each house of the general assembly within specified limitations directly related to state revenues.
2. To permit the state to contract debt without limitation on amount of purpose, in addition to the authority specified above, if that debt is submitted to a vote of the electors by a three-fifths majority vote of each house of the general assembly and approved by a majority of the electors voting on the question.
3. To require the general assembly to retire at least 4% of the state's indebtedness each year.
4. To permit the state to borrow funds to meet a current year's appropriations if any such loan is repaid out of that year's revenues.
5. To repeal part of the constitutional requirements relating to a sinking fund and to require that the general assembly provide for the repayment of state debt.
6. To enumerate purposes and amounts for which the first \$640 million of capital improvement debt would have to be appropriated.

(Proposed by Resolution of the General Assembly of Ohio)”

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Source: Youngstown *Vindicator*, Nov. 6, 1977. Available at:  
<https://news.google.com/newspapers?id=zfRJAAAAIIBAJ&sjid=sYQMAAAAIBAJ&pg=2945,1851669&hl=en>  
(last visited March 28, 2016).

<sup>7</sup> R.C. 151.02. *See also*, <http://obm.ohio.gov/BondsInvestors/publicfacilities.aspx> (last visited Feb. 8, 2016).

<sup>8</sup> If the General Assembly should place a ballot issue before the voters to repeal Sections 7, 8, 9, 10, and 11 of Article VIII as recommended herein, the committee recommends the ballot issue also contain a proposal to revise Section 2 to delete reference to the Sinking Fund, as more fully discussed in the committee's report and recommendation on Article VIII, Sections 1, 2, and 3 (State Debt).



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### ADDENDUM TO REPORT AND RECOMMENDATION

### OHIO CONSTITUTION ARTICLE VIII SECTIONS 7, 8, 9, 10, AND 11

### THE SINKING FUND AND THE SINKING FUND COMMISSION

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The Ohio Constitutional Modernization Commission previously adopted a report and recommendation regarding Article VIII, Sections 7, 8, 9, 10, and 11 of the Ohio Constitution concerning the Sinking Fund and the Sinking Fund Commission. In sum, that report and recommendation called for repeal of those provisions in Ohio's constitution addressing the creation, composition, duties and responsibilities of the Sinking Fund Commission, for the reason that the duties of the Sinking Fund Commission are being performed by other state officers and agencies.

This memorandum is an addendum to that previous report and recommendation. The purpose of this addendum is to report to the General Assembly the sense of the Commission that, in the event the General Assembly elects to move forward with this proposed amendment, the General Assembly should consider addressing, as well, who will have responsibility for debt reporting functions. In particular, Section 9 of Article VIII provides that the Sinking Fund Commission must prepare a biennial report, which is to include certain information about the Sinking Fund. While the state no longer utilizes a Sinking Fund *per se*, the state does incur bonded indebtedness for which repayment occurs over time, and which is subject to certain constitutional limitations as set forth in various other provisions in Article VIII.

In order to provide Ohio's citizens and the General Assembly ongoing access to information regarding the state of Ohio's indebtedness, the Commission urges that, if the General Assembly moves forward with that report and recommendation, then the General Assembly also take steps to assign to the treasurer of the state an obligation to provide biennial reporting regarding the aggregate outstanding debt of the state. The Commission takes no position on whether the General Assembly should assign that responsibility to the treasurer by statute, or instead by proposing a constitutional amendment to Ohio's voters. Likewise, the Commission takes no position on the appropriate specific contents of such a report. The Commission believes, however, that debt reporting is an important function, and that the General Assembly should take steps to insure the ongoing availability of such information.

### **Presentation to the Commission**

On June 8, 2017, Douglas R. Cole, chair of the Finance, Taxation, and Economic Development Committee, presented this addendum to the report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11.

### **Action by the Commission**

At the Commission meeting held June 8, 2017, Commission member Doug Cole moved to recommend that the General Assembly accept the addendum to the report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11, a motion that was seconded. Upon a voice vote, the motion passed unanimously.

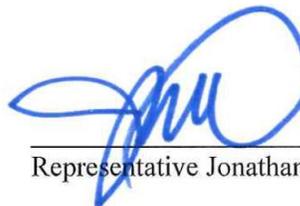
### **Conclusion**

The Ohio Constitutional Modernization Commission hereby recommends an addendum to its recommendation that Article VIII, Sections 7 through 11 be repealed as obsolete.

### **Date Adopted**

The Commission voted to recommend that the General Assembly accept the addendum to its report and recommendation on June 8, 2017.

  
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Senator Charleta B. Favares, Co-chair

  
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Representative Jonathan Dever, Co-chair

# **Appendix 2**

Finance, Taxation, and Economic  
Development Committee

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Minutes of the Committee

## **Minutes of the Committee**

NOTE: In the early years of the Commission, committee records were kept on an ad hoc basis by various individuals assisting the Commission. Unfortunately, this left committee records, in particular, in a haphazard state. After the hiring of permanent staff in 2014, committee records were regularly kept and put into a standardized format. In addition, staff revised early committee minutes, where available, to put them into the standardized format and to correct any errors or omission discovered during the process. Both the original and revised minutes have been retained with the full files of the Commission; however, the revised minutes have been endorsed as the official record of the committee and are the only documents included here.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 9, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:57 a.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Asher, Cafaro, Davidson, and Widener in attendance.

#### **Approval of Minutes:**

This being the first meeting of the committee, there were no minutes to approve.

#### **Discussion:**

Chair Cole welcomed committee members and asked for ideas of how to proceed with this committee. A suggestion was made to have a professional bond counsel present to the committee to help answer questions about the current functionality of bonds. Committee members also expressed an interest in having an expert provide a legal analysis of state debt limits. The committee also indicated a desire for background information on taxes and economic development issues.

The committee agreed that it would hear presentations from individuals with expertise in the areas of bonds, taxes, and economic development.

#### **Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:27 p.m.

**Approval:**

The minutes of the May 9, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the July 11, 2013 meeting of the committee.

*/s/ Douglas R. Cole*

Douglas R. Cole, Chair

*/s/ Karla L. Bell*

Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, JUNE 13, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:38 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Mills, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

There being no quorum for part of the June 13, 2013 meeting, the minutes were not approved.

#### **Presentations and Discussion:**

After describing the committee's discussion at its last meeting, Chair Cole introduced two presenters to the committee.

Chair Cole recognized Attorney Gregory W. Stype, Squire Patton Boggs, (US) LLP, and Kurt Kauffman, deputy director of the Office of Budget and Management, who gave a joint presentation on state debt, including limitations on debt, debt authorizations, and sinking fund provisions. Questions were asked throughout the presentation.

Chair Cole asked committee members if they would like a similar presentation on taxation at the next meeting to which they agreed. The committee also discussed dates in July for their next meeting.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 11:05 a.m.

**Approval:**

The minutes of the June 13, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the July 11, 2013 meeting of the committee.

*/s/ Douglas R. Cole*  
\_\_\_\_\_  
Douglas R. Cole, Chair

*/s/ Karla L. Bell*  
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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, JULY 11, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:43 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Davidson, Mills, Peterson, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the May 9, 2013 and June 13, 2013 meetings were reviewed and approved.

#### **Presentations and Discussion:**

Senator Tavares raised a protest regarding the committee hearing not being recorded by Ohio Government Telecommunications (OGT). She said the Commission and OGT agreed to record these meetings so they should fulfill that promise. There was a motion to recommend to the full Commission that the proceedings continue to be taped with both audio and video. After discussion, the Committee adopted the motion as a consensus rather than a formal motion.

Chair Cole recognized Thomas Zaino and Joanne Limbach, both former state tax commissioners, to present on tax provisions in the Ohio Constitution. Committee members asked questions during the presentation, and Mr. Zaino and Ms. Limbach agreed to follow up with the committee regarding three items discussed.

The committee discussed having a presentation regarding economic development for the next meeting, and Chair Cole encouraged members to recommend and invite qualified professionals to speak to the committee.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 11:36 a.m.

**Approval:**

The minutes of the July 11, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the August 8, 2013 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, AUGUST 8, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:34 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Asher, Cafaro, Davidson, Mills, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the July 11, 2013 meeting were reviewed and approved.

#### **Discussion:**

The committee discussed proceedings for the next six months. A consensus was formed that the next three meetings will focus on presentations regarding economic development and the following three meetings will be working meetings to generate recommendations from the committee to the full Commission. The committee exchanged thoughts on speakers for the upcoming meetings, which included port authorities, local chambers of commerce, the Ohio Municipal League, the Cleveland Growth Partnership, JobsOhio, the Ohio Development Services Agency, and the Foundation for Appalachia Ohio.

A discussion ensued regarding the purpose of the committee and committee member Kathleen Trafford noted a previous protest regarding the committee hearings not being recorded by Ohio Government Telecommunications (OGT).

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 11:38 a.m.

**Approval:**

The minutes of the August 8, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the September 12, 2013 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, SEPTEMBER 12, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:37 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Mills, Peterson, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the August 8, 2013 meeting were reviewed and approved.

#### **Presentation and Discussion:**

Chair Cole recognized Attorney Scott Ziance, of Vorys, Sater, Seymour & Pease, LLP, who presented on the history of economic development in Ohio. Mr. Ziance provided a PowerPoint presentation regarding the evolution of the constitutional provisions relating to economic development, with a particular focus on Article VIII, Sections 4, 6, and 13. Questions were fielded throughout the presentation and the discussion focused on the expansion of state and local government and the sections of Article VIII that apply to economic development.

Senator Charleta Tavares asked for research regarding what other states have in their constitutions regarding public-private partnerships and where Ohio fits on that range. Chair Cole announced that he has addressed that issue.

Mr. Ziance provided suggestions to the committee as potential aspects of the constitution for the committee to address, including that Article VIII, Section 13 does not address the joint

shareholder issue; that the state cannot lend credit for operating capital; and whether the state's full faith and credit should be expanded.

After the presentation concluded, there was a discussion regarding the fact that the Commission proceedings still are not being recorded.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 11:47 a.m.

**Approval:**

The minutes of the September 12, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the November 14, 2013 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, NOVEMBER 14, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:22 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Davidson, Mills, and Peterson in attendance.

#### **Approval of Minutes:**

The minutes of the September 12, 2013 meeting were reviewed and approved.

#### **Presentations and Discussion:**

Chair Cole recognized Paul Toth, president and chief executive officer of the Toledo-Lucas County Port Authority, who presented on the history of the port authority, emphasizing particularly its place in Ohio history. Mr. Toth described the port authority's powers as a public entity and explained its role in economic development. He said his agency experiences challenges with the constitution concerning public-private partnerships because the constitution prohibits these partnerships. He advocated for the committee to consider allowing limited investment in corporations within the constitution.

Questions were asked regarding the Port Authority's ability to tax and what other states are doing to address this issue. Mr. Toth stated that Ohio has a competitive advantage over other states in finding creative means for funding, and that no other state does this.

The committee also heard from Lisa Patt-McDaniel, director of community development for the Ohio Capital Corporation for Housing. Ms. Patt-McDaniel stated three issues that the committee could address: 1) the ability of the state to have maximum flexibility in financing; 2) permission for local government to make loans for economic development purposes; and 3) multiple local government jurisdictions. Both presenters provided an overview of Article VIII, specifically Sections 4, 6, and 13. Questions were asked throughout the presentation.

Chair Cole asked the committee how it wanted to proceed. Committee member Jo Anne Davidson suggested the committee receive research on the 1851 debate on this issue to see if that conversation may be germane to issues being discussed today. The committee also looked to Senior Policy Advisor Steven H. Steinglass for input.

Chair Cole suggested the committee look for more specific issues to discuss, such as opponents to the idea of expanding state flexibility in financing. Committee member Herb Asher suggested obtaining a copy of a report on Enterprise Universities from the Ohio Board of Regents.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:43 p.m.

**Approval:**

The minutes of the November 14, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 13, 2014 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, DECEMBER 12, 2013

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:15 a.m.

#### **Members Present:**

A quorum was not present with Chair Cole, Vice-chair Bell, and committee members Amstutz, Asher, Peterson, and Trafford in attendance.

#### **Approval of Minutes:**

There being no quorum, the minutes of the November 14, 2013 meeting were not approved.

#### **Presentation and Discussion:**

Chair Cole recognized Dale Oesterle, professor of law at the Ohio State University Moritz College of Law, who presented on "Public Private Partnerships: Financial Limits in the Constitution." Prof. Oesterle discussed Ohio's unique position in the history of financial covenants, indicating these types of arrangements are under attack. He added that other representative democracies, however, are looking to Ohio for these packages of financial covenants.

Questions were asked throughout the presentation. Representative Ron Amstutz suggested that Representative Kirk Schuring or researchers who studied the movie industry in Ohio present to the committee on the study's findings. Vice-chair Karla Bell asked Prof. Oesterle to provide language to the committee that would address the prohibition loopholes discussed in his presentation. Committee member Kathleen Trafford discussed delving into the issue of courts

having ruled that certain parties do not have standing to bring certain cases, and how that issue might be addressed.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 11:01 a.m.

**Approval:**

The minutes of the November 14, 2013 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 13, 2014 meeting of the committee.

*/s/ Douglas R. Cole*  
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Douglas R. Cole, Chair

*/s/ Karla L. Bell*  
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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MARCH 13, 2014

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:35 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Davidson, Mills, Peterson, Sawyer, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the November 14, 2013 and the December 12, 2013 meetings were reviewed and approved.

#### **Presentation and Discussion:**

Chair Cole began a discussion on making a recommendation to the full Commission to delete the inoperative language in Article VIII. Senator Charleta Tavares suggested a historical copy of the Ohio Constitution be kept on record with all of the original language. Both Senator Larry Obhof and Representative Gary Scherer, who was present in the audience, indicated to committee members that they will be submitting recommendations to the committee regarding this portion of the constitution as well.

A discussion on revising the public-private partnership portion of Article VIII also took place, with Representative Ron Amstutz suggesting that all committee members revisit previous information provided through presentations and come back with proposals for the committee.

Committee member Jo Anne Davidson suggested having the Legislative Service Commission research what other states are doing in regard to these topics, and Sen. Tavares agreed to submit this request. Ms. Davidson also recommended inviting the Municipal League give its input on this topic.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 11:16 a.m.

**Approval:**

The minutes of the March 13, 2014 meeting of the Finance, Taxation, and Economic Development Committee were approved at the April 10, 2014 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, APRIL 10, 2014

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:10 a.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Amstutz, Asher, Peterson, and Sawyer in attendance.

#### **Approval of Minutes:**

The minutes of the March 13, 2014 meeting were reviewed and approved.

#### **Presentation and Discussion:**

Chair Cole announced there will be an ad hoc committee on obsolete language to address issues like outstanding bonds. He said the committee was unable to obtain what changes other states had recently made to their constitutions, and the Municipal League decided that oral testimony would not be appropriate, so they will be submitting written testimony.

Chair Cole recognized Senior Policy Advisor Steven H. Steinglass, who presented comments on a conversation that he had with Attorney Gregory Stype, of Squire Patton Boggs (US) LLP, concerning obsolete provisions and comparative economic development. Mr. Steinglass noted the Coordinating Committee created a working group to address these issues.

Committee member Jo Anne Davidson suggested reaching out to the Ohio Treasurer's office regarding the sinking fund. Vice-chair Bell requested presentations from both the treasurer's

office and from Mr. Stype regarding the sinking fund. Representative Ron Amstutz suggested involving the Office of Budget and Management in the discussion.

Ms. Bell requested that the memo prepared by the Legislative Service Commission regarding the provisions the committee wishes to address be circulated to the committee and be posted for public input.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 10:18 a.m.

**Approval:**

The minutes of the April 10, 2014 meeting of the Finance, Taxation, and Economic Development Committee were approved at the September 11, 2014 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REVISED MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 8, 2014

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:35 a.m.

#### **Members Present:**

A quorum was not present with Chair Cole and committee members Amstutz and Asher in attendance.

#### **Approval of Minutes:**

The minutes of the March 13, 2014 meeting were reviewed and approved.

#### **Presentation and Discussion:**

Chair Cole recognized Seth Metcalf, deputy treasurer and executive counsel, from the Office of the Ohio Treasurer. Mr. Metcalf presented on the Sinking Fund Commission and potential obsolete language within Article VIII of the Ohio Constitution.

Mr. Metcalf provided a history of the Sinking Fund, along with an explanation of the modern function and mechanics of the Sinking Fund Commission. He also spoke about other issuers of debt in the state and their function within the constitution and discussed the complexities of determining obsolete language. Questions were asked throughout the presentation.

#### **Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:15 p.m.

**Approval:**

The minutes of the May 8, 2014 meeting of the Finance, Taxation, and Economic Development Committee were approved at the September 11, 2014 meeting of the committee.

*/s/ Douglas R. Cole*  
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Douglas R. Cole, Chair

*/s/ Karla L. Bell*  
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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, SEPTEMBER 11, 2014

#### **Call to Order:**

Vice Chairman Bell called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:20 a.m.

#### **Members Present:**

A quorum was present with committee members Bell, Asher, Peterson, Sawyer, Mills, Tavares, and Davidson in attendance.

#### **Approval of Minutes:**

The minutes of the April 10, 2014 meeting of the committee were approved.

#### **Topics Reviewed:**

##### *Tax Preferences and Exemptions*

Jon Honeck, Director of Public Policy at the Center for Community Solutions, gave a presentation on tax expenditures and increasing the transparency and accountability of tax practices found in the Ohio Constitution. Mr. Honeck recommended that the committee recommend the adoption of a constitutional provision that would improve the tax transparency and accountability of certain kinds of tax practices. He indicated that the Ohio tax code contains many tax preferences and exemptions which he referred to as "tax expenditures." He explained that the credits, exemptions, and deductions in the tax code can be viewed from different perspectives.

The first perspective would be to view the credits, exemptions, and deductions as nothing more than their title would indicate, as tax credits, exemptions, and deductions.

From another perspective the credits, exemptions, and deductions can be viewed as a type of expenditure; more specifically, a “tax expenditure.” Mr. Honeck explained the reason these credits, exemptions, and deductions would be referred to as tax expenditures, is because “they can sometimes substitute for line item appropriations that would accomplish the same purpose.”

Mr. Honeck indicated that the Tax Policy Center defines “tax expenditure” as a revenue loss attributable to tax provisions that often result from the use of the tax system to promote social goals without incurring direct expenditures. How tax expenditures are structured affects both those who will benefit from them and how much they will reduce federal revenues.

He testified that this type of “tax expenditure” is not included in the state’s budget bill. Mr. Honeck proposed the following constitutional provision be adopted in hopes of changing this: “Any tax credit that is refundable or allows a carry forward of an unused portion of the credit to a new tax year is subject to Article II, Section 22, and its cost shall be accounted for in the general revenue fund of the state, unless its sole purpose is to reconcile payments made by individuals and pass-through entities in which the individuals have an ownership share.”

Mr. Honeck pointed out that this language would mandate the use of the General Revenue Fund (GRF) for carry forwards and refundable credits. He believes that using the GRF will make it more likely that policymakers and the public will take a closer look at the credits and evaluate their effectiveness.

Article II, Section 22 of the Ohio Constitution states: “No money shall be drawn from the state treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.”

After his presentation, members of the committee asked several questions. Most pertained to the effects the proposed provision would have on the GRF. Mr. Honeck stated he believed that the provision would add money to the GRF.

A follow up question concerned whether there would be calculations that would become “out of whack” because of the inflated numbers. Mr. Honeck stated that the 5% debt limit would increase. He also explained that some calculations would need to be reviewed.

He was also asked if there is an expenditures commission that could look into the credits, exemptions, and deductions more thoroughly or if the creation of such a commission would be helpful. It was noted that the 5% debt level that the state has would be increased as a result of this change and that the Office of Budget and Management should be able to comment on this language proposal before it is considered.

A committee member commented that the General Assembly may proceed with line items as they normally do despite this provision. Mr. Honeck agreed and intended the language to be self-policing. He was then asked if anything like his proposal has been introduced in legislation as a possible statute. He responded that to his knowledge such legislation has not been introduced.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 10:47a.m.

**Attachments:**

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Jon Honeck
- Prepared remarks of Jon Honeck

**Approval:**

The minutes of the September 11, 2014 meeting of the Finance, Taxation, and Economic Development Committee were approved at the January 15, 2015 meeting of the committee.

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Douglas R. Cole, Chair

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Karla L. Bell, Vice-Chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JANUARY 15, 2015

#### **Call to Order:**

Chairman Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:30 a.m.

#### **Members Present:**

A quorum was present with committee members Cole, Asher, Mills, Peterson, Sawyer, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the September 11, 2014 meeting of the committee were approved.

#### **Presentation:**

*Steven H. Steinglass*  
*Senior Policy Advisor*  
*Constitutional Modernization Commission*

Senior Policy Advisor Steven Steinglass presented an overview of Article VIII, relating to the public debt provisions of the Ohio Constitution. He stated that revisions may be necessary with respect to some of the provisions, but he was not sure if the committee had identified the policy direction it wanted to go, and he hoped that this overview would help the committee.

Mr. Steinglass continued, saying that the committee has the benefit of the record of proceedings of the 1970s Commission, the chapter from the Steinglass & Scarselli book *The Ohio State Constitution*, and information from the website of the Office of Budget and Management. One topic is whether the committee should recommend that the state continue its approach to public debt under which authority for incurring public debt, are presented to the voters for approval. The recommendations on public debt made by the 1970s Commission were rejected in 1977; these recommendations would have eliminated the debt limit while retaining a role for the voters.

Mr. Steinglass noted there are at least nine obsolete provisions in which the bonds have all been retired. He said the committee should decide whether it wants to repeal obsolete provisions. If so, he asked if there are obligations under those provisions, such as matured bonds and interest coupons, which need to be taken into consideration. He said the committee needs to determine if there are any important provisions buried in otherwise obsolete provisions that should be retained even though the bonding authority under them may no longer be viable. Another issue to consider is the sinking fund which is covered in five sections of Article VIII. He also asked whether Ohio needs to review how other states may be using public debt to spur infrastructure improvement and economic development.

Mr. Steinglass said Ohio operates under the 1851 Constitution, which has been amended 121 times. Article VIII, public debt, is the longest of the articles, with approximately 26,500 words. This article has about half the words in the Constitution and has been amended more frequently than any other article in the Constitution. There have been many proposals and many rejections by voters.

According to Mr. Steinglass, the 1802 Constitution had no provision on public debt in its approximately 6,000 words. In 1851, the convention approached state debt in light of a financial crisis that had resulted from heavy spending on canals and other transportation structure projects and bad economic times. He noted a previous presentation to the committee in May 2014 on this topic, by Seth Metcalf, Deputy Treasurer & Executive Counsel for Ohio Treasurer's office, and a 1985 University of Toledo Law Review article written by David Gold, an attorney with Ohio's Legislative Services Commission, about the 1837 act called the Loan Law, which went so far as to require the state to help bankroll railroads, canals and highways, which were private-sector undertakings.

The 1851 Constitution addressed public debt by adopting a \$750,000 limitation on debt, by limiting the use of state funds, and by requiring prudent management of state debt through the sinking fund. Between 1851 and 1911, Mr. Steinglass said there were no amendments to Article VIII, though there was one proposal that was defeated.

The 1912 Constitutional Convention proposed two amendments to Article VIII that the voters approved, but they did not relate to today's theme.

In 1921, the first post-1912 amendment to Article VIII was proposed and adopted. Section 2a created an exception to the \$750,000 debt limit. It provided bonuses to World War I veterans. Other states had done this as had England, France, and Canada. Section 2a was approved by voters by wide margin. This set the stage structurally for how the Constitution would approach the debt limitation.

Mr. Steinglass said that in 1953, the General Assembly proposed, and voters approved, a repeal of a constitutional provision, repealing section 2a that authorized World War I bonds, because the funds were fully expended and there was no longer a need to have this provision.

In 1968 Article VIII, Section 2i was approved. This was an important amendment that in addition to authorizing general obligation bonds, authorized revenue bonds not supported by the

full faith and credit of the state. The amendment also referred to Article XII, Section 5a, making clear that highway user receipts are available to pay off general obligation bonds for highways issued under this and earlier sections.

Mr. Steinglass observed that Article VIII has been amended 27 times since 1851, but nine of the original 13 sections have never been amended. Two of the original sections that were amended deal with public works. Another two relatively minor amendments deal with insurance and who may serve as commissioners of the sinking fund. This leaves 23 additional amendments involving the use of bonds for public purposes.

He identified nine sections of Article VIII that no longer authorize issuance of general obligation bonds because all bonds had been issued or the time for issuing them had passed. These sections had been identified in a memorandum on obsolete provisions prepared by the Legislative Service Commission. He said more detail is found in the semiannual reports issued by the Commissioners of the Sinking Fund.

Assuming the committee does identify obsolete provisions and is inclined to recommend repeal, he suggested that the committee also recommend a provision to protect those individuals having a remaining outstanding interest coupons or outstanding bonds. The 1970s Commission recommended adoption of a schedule to protect those who had an interest in these bonds. The simple conclusion is that if obsolete provisions are identified and if there is an inclination to repeal them, there is a mechanism protecting those having a financial interest in the bonds. Thus, there would be no adverse effect.

Mr. Steinglass said the more difficult issue is the need to go through any potentially-repealed provisions with great care to see if the committee was inadvertently throwing out something that should be retained. He said some would argue that the committee should not take this chance, but, on the other hand, the committee could use great care to look at these provisions to see if they have a continuing impact and are still needed.

Mr. Steinglass said that Greg Stype, a Columbus attorney with the firm of Squire Sanders, who spoke to the committee at the June 2013 meeting, identified Section 2i as an obvious example. The 1970s Commission recognized that as well, recommending that it be moved verbatim to its own stand-alone section. Are there other elements of 2b through 2j that should be preserved, and does the committee want to proceed in identifying those provisions that are obsolete, and thus should be removed and those that should be preserved? Mr. Steinglass said, "We must be sure we aren't removing muscle or bone."

Chair Cole said there has been a sense of the committee that there is a desire to move forward on removing obsolete provisions, so a concrete step would be to come up with what that proposal would look like. Mr. Stype explained in his presentation that just excising may have unintended consequences and this becomes complicated. Chair Cole said the committee needs to work toward having a concrete proposal that it can vote up or down. However Chair Cole is not sure if it is in the Commission's interest to have this be an early thing to go to the voters, as it is just housekeeping.

Mr. Steinglass observed that this involves a lot of staff work, so we need a real charge to move forward on obsolete provisions. The timing can be worked out with Executive Director Steven Hollon. At some point a joint resolution will be necessary. Mr. Steinglass noted the staff may need to engage additional volunteer help on these questions.

Chair Cole said the larger question is what we can accomplish as a committee. For example - capital improvement bonds, water management, water controls, and state supported higher education. What is permissible capital improvement infrastructure spending? Do categories need to be expanded for modern technology and modern needs? Is this inherent in the constitution or do we need specific provisions? Is the constitutional language standing in the way of progress on this type of thing?

Mr. Steinglass said these are good questions and there may be other things. If there is a little ambiguity it will be litigated, but maybe there is a need to try to eliminate ambiguity. If we put on our futuristic hats, there may be some new provisions that need to be proposed.

Committee member Trafford asked whether there should be an adjustment to prevent this problem in the future. She said the reason we have a lengthy Section 2 is because of Section 3. She asked whether the committee should look at Section 3 and find a way to preserve voters' right to approve public debt without amending the Constitution every time. She continued by noting if we take out language about debt having to be specified in Section 2 and provide that debts have to be approved by voters above a certain amount, this would remove the bulky problem from the constitution. Section 1 contains the \$750,000 limit and this requires a specific provision such as 2a through 2s each time the state goes over the limit.

Chair Cole said the committee did talk about this at a previous meeting, saying that the committee may need to create a framework for deciding how to get to a final resolution about how to resolve the problems.

Mr. Steinglass observed that the 1970s Commission addressed these issues because the problem is that every 30 years you could repeal the last bond authorizations, but this would not change the process. Mr. Steinglass said he will provide the committee with a copy of that portion of the 1970s Commission's discussion of the larger issues so the committee can understand their approach. He noted that the earlier commission identified five different alternatives; including maintaining the \$750,000 debt limit and having a referendum to approve borrowing. This approval was not recommended because of concerns that it would not be a sufficient restraint on borrowing. Other options were to do nothing, to increase the debt limit to a higher level, omit any debt limit, or to create a flexible debt limit.

Ultimately, the 1970s Commission recommended repealing the \$750,000 debt limit in favor of a flexible debt limit and using a referendum to approve future public debt. The voters rejected this proposal by a substantial vote in 1977. He stated that the history of this proposal and what led up to it is contained in the early part of the final report of the 1970s Commission. He said he will share that with the committee, but he does not know why it was not successful. He also said he does not know what the committee wants to do about this topic, which is the larger question of how we do business in regard to public debt. Is a referendum a better alternative than simply a

constitutional amendment? There may be significant discussion that the committee will want to have on this. We could slim down this article in a way that does not have a significant impact on the right of voters to weigh in on public spending.

With regard to the sinking fund, the 1970s Commission recommended repeal of the five provisions on the sinking fund because this approach is no longer used to issue debt. The General Assembly did not fully embrace the 1970s Commission's recommendations, and the joint resolution that went to the voters (but was rejected) proposing keeping in the constitution the existence of the sinking fund commission and its duty to issue semiannual reports. Mr. Steinglass surmised that the General Assembly wanted to get the state officials to sign their names and thus stand behind the reports regarding public debt. No one who has presented to the committee has identified any need to keep sinking fund provisions. If the committee decides to recommend repeal of the sinking fund, it will be necessary to review other provisions of Article VIII that refer to the sinking fund and update them.

Chair Cole said the state has adopted a model of public debt, and has set limits. He wondered if the committee should look at a comparison of what other states do about public debt. Chair Cole asked whether there is any consensus on how other states approach public debt and whether the committee can have a comparative pro and con discussion. He said gains from any changes would need to be significant because complete revision of the article is risky. He would like the committee to consider other basic models for public debt issuance by states.

Mr. Steinglass said we could learn more about other states by background readings or presentations. A third alternative would be to bring in a speaker who knows about this area, rather than just having a paper comparison. He identified Richard Briffault, a professor at Columbia Law School who could make a presentation, and he recommended inviting Professor Briffault to make a presentation to the committee.

Chair Cole said he would like to start with the questions, and that he doesn't think he has enough information to think about this. He remarked that unless someone identifies serious and significant problems with the current system he would be reluctant to support change. He is risk averse, and says he is not sure he understands it well enough.

Sen. Sawyer noted that, in 1977, this conversation was swirling around but no real change occurred. He said he would welcome the chance to have the ability to read on this topic prior to a conversation, and to read about the environment in which we were making decisions at that time and compare it with today. These are big decisions, but he said he believes we currently do not have a smooth running system and it would benefit the state to make it work more smoothly. He said he views this review as an opportunity.

Mr. Mills commented that the National Council of State Legislatures ("NCSL") has a wealth of information on this topic and may already have a document comparing models from various states. He would like staff to see what NCSL has on this topic, even contacting NCSL for direct help.

Mr. Steinglass suggested the committee bring in Professor Briffault, who is someone with a good national perspective, possibly in May 2015. Mr. Steinglass asked whether the committee would like work to be done on the smaller issues even though we would not get to them for some time, asking, specifically, whether the committee will be looking at other provisions to make sure they would not be affected by removal of obsolete provisions.

Sen. Sawyer commented that the committee needs to be sure of what is meant by the word “obsolete.”

Committee member Asher said that one goal should be to streamline Section VIII so that future generations don’t give up in despair. He said the committee could still move forward on the obsolescence question, but it can also focus on the broader problem and make recommendations so that future problems won’t occur.

Chair Cole asked whether other state constitutions dedicate this much attention to public debt. He wondered whether Ohio would be benefited by removing all of this and replacing it. He said he shares everyone’s frustration with this Article; it is hard to read and understand. He said he is seeking transparency and right now it isn’t there. Chair Cole thanked Mr. Steinglass for his presentation, and looks forward to trying to focus in on these questions over the next year. He observed that this is going to be a long process about which the committee will be thinking long and hard.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 10:47a.m.

**Attachments:**

- Notice
- Agenda
- Roll call sheet

**Approval:**

The minutes of the January 15, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 12, 2015 meeting of the committee.

*/s/ Douglas R. Cole*

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Douglas R. Cole, Chair

*/s/ Karla L. Bell*

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Karla L. Bell, Vice-Chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MARCH 12, 2015

#### **Call to Order:**

Chairman Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 1:40 p.m.

#### **Members Present:**

A quorum was present with committee members Cole, Amstutz, Asher, Clyde, Davidson, Mills, Peterson, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the January 15, 2015 meeting of the committee were approved.

#### **Presentation:**

*“Financial Transparency and Modernizing Article VIII”*

*Seth Metcalf  
Deputy Treasurer and General Counsel  
Ohio Treasurer of State*

Seth Metcalf, Deputy Treasurer and General Counsel of Ohio’s Treasurer of State, presented testimony before the committee regarding the modernization of Article VIII (Public Debt and Public Works), relating to the public debt provisions of the Ohio Constitution. He stated that Article VIII serves two main functions: (1) authorizes Ohio to incur debt with certain limitations, and (2) sets forth the platform by which Ohio issues and pays its debt.

Mr. Metcalf explained that Article VIII authorizes debt and sets forth mechanisms for paying debt. He said that the sheer length of the article causes a reduction in the transparency that was adopted as part of the constitution in 1851.

Mr. Metcalf continued by discussing two fundamental defects of Article VIII:

- 1) The \$750,000 debt limitation as set forth in Section 1 has existed since its adoption. He compares the state's general revenue expenditures in 1851 (\$1.6 million) to 2014 (\$28.9 million).

He believes the state needs to borrow more than \$750,000.

- 2) Section 2 has been amended 18 times, which creates a complicated addition to Article VIII for the general public to comprehend.

Mr. Metcalf noted, as of June 30, 2014, the state's total indebtedness was approximately \$10.93 billion. He claims this amount demonstrates how insignificant the \$750,000 debt limitation has become.

Mr. Metcalf again touched on the point of how Article VIII has become nearly incomprehensible which has created a transparency and accessibility problem. He said the voluminous language obfuscates the meaning of the article.

According to Mr. Metcalf, in 1851, Article VIII's \$750,000 cap represented 46 percent of the state's general revenue expenditures. Today, the debt is \$10.93 billion, represents roughly 38 percent of the state's general revenue expenditures. Members of the committee questioned Mr. Metcalf if transportation bonds and the turnpike appropriations were included in the \$10.93 billion. He indicated those fiscal items were not a part of the general revenue expenditures. Mr. Metcalf also explained that there is currently no constitutional provision on how much debt in the aggregate the state can borrow or for how long the state can borrow it.

Chair Cole asked whether Mr. Metcalf has compared state debt to the size of the economy, and whether there are any figures he can cite about that relationship. Mr. Metcalf said he doesn't have those statistics, but can get them.

Committee member Rep. Ron Amstutz asked whether Mr. Metcalf is differentiating between types of debt, for example does the 5 percent limit include highway debt? A member of the Office of Budget and Management, present at the meeting, said that highway debt is not included in that limit.

Committee member Kathleen Trafford asked whether these numbers include revenue bonds as opposed to true debt.

Mr. Metcalf stated that lease appropriation debt is a revenue debt; it is inside the number given. He said other bonds such as the conduit issue debt are not included. He also said the Ohio Turnpike is not included.

Chair Cole asked whether these items would have been included in 1851. Mr. Metcalf said that would have been a point of interpretation, as there was no distinction then between direct and indirect obligations.

Mr. Metcalf clarified he is only advocating for overall debt cap and overall debt obligations to be provided for. He said that if something is paid for from the general revenue fund, it has been treated as a direct obligation of the state for purposes of the 5 percent cap.

Chair Cole asked whether this could be accomplished by using average maturities. Mr. Metcalf said there are a variety of ways to get to that.

Mr. Metcalf explained why some items are appropriately excluded; stating that, to the extent the state is not obligating taxpayers to pay back a debt with taxes, there isn't a constitutional obligation.

Chair Cole asked why Mr. Metcalf advocates keeping the war veterans provisions. Mr. Metcalf said the state must retain its commitment to veterans. He said the committee could state in new language that it is okay to issue debt to compensate veterans to thank them for their service.

Mr. Metcalf added that the growth of Article VIII has undercut another piece of the Ohio Constitution: the Commission of the Sinking Fund. Article VIII creates a Sinking Fund Commission meant to oversee the debt status of the state, but the amendments currently in Section 2, have delegated the responsibilities of the Commission to either the General Assembly or the Public Facilities Commission. This has transferred the accountability of the statewide executive officeholders from the constitution to statute. He claims that a constitutional check has been 'eroded' and that the Commission of the Sinking Fund has been circumvented by these amendments. Now, essentially, there is no requirement that a majority of the sinking fund commissioners agree to debt, with the result that that commission hasn't met since 2008.

With regard to conduit issuances, Mr. Metcalf observed that it is a function of federal tax law that to get a benefit, you have to have a government issuer.

Mr. Metcalf proposed that Sections 13, 14, and 16 of Article VIII be condensed into one. He concluded that Ohio needs a meaningful limitation in a percentage form.

Chair Cole asked what would be a meaningful debt limit? Mr. Metcalf said he does not have a specific proposal, but agrees that it would be something that is indexed to another standard, and would be built in.

Committee member Sen. Charleta Tavares asked whether other states have percentages and what their experience might be. Mr. Metcalf did not know but offered to find out.

Committee member Herb Asher asked if the limit were adjusted it might suggest that all debt up to that point could be incurred by the General Assembly without going to the ballot. Mr. Metcalf agreed with this statement. Mr. Asher pointed out that while this might be rational, a proposal that says voter approval isn't necessary and wouldn't be popular. Mr. Metcalf said the change would mean restoring a limit that currently isn't there.

Rep. Amstutz asked how the committee would limit this; what would it be a percentage of? Would there be yearly limits or have an outside timeline?

Mr. Metcalf said that, with some exceptions, there are limitations on final maturity. It is not infinite. At some level there is an overall debt limitation, but it is not straightforward.

Ms. Trafford asked how the conduit issuance issue could affect the state's credit if there is a default. Mr. Metcalf gave an example of the Ohio Water Development Authority, saying if that organization defaults there is no direct obligation to the state. He said that should not directly impact the ability of the state to borrow money. He said it is all interrelated, and that default is suggestive of a larger economic problem in Ohio.

Committee member Jo Ann Davidson asked what the state's bond rating does, and what the impact of lowering the bond rating is. If we make a change would it impact our bond rating? Mr. Metcalf said there are some positives but there could be some negatives as well if we put Ohio in too restrictive a position.

Ms. Davidson asked whether the General Assembly needs the ability to override the debt limitation if there is a catastrophe. Mr. Metcalf said yes, but that is currently available.

Ms. Davidson asked whether, if exceptions aren't broad enough to deal with unusual circumstances, changing the debt limit would make any sense. Mr. Metcalf said the essential proposal would do away with things that prevent the General Assembly from having discretion. Chair Cole asked if there is a resource the committee could consult that would give it the ability to project the impact of a change. Mr. Metcalf said the committee could see how other states deal with it, and that the committee could have conversations with the rating agencies, even though they probably wouldn't give any assurances but would only react to a proposal.

Chair Cole observed that bond rating involves risk. He asked whether a fundamental structural change to Article VIII would potentially increase borrowing costs to the state. Mr. Metcalf said that if the committee just changes the \$750,000 limit it doesn't solve the problem. He said there may be old interpretive guidance that could help the committee.

Mr. Asher asked if there are any states in which the issuance of debt, either by the legislature or the people, requires a supermajority. Mr. Metcalf said he doesn't know but can get back to the committee.

Mr. Metcalf offered the following suggestions for the committee to consider in modernizing Article VIII: first, the extent to which the constitution permits the General Assembly to incur debt for generic purposes – and limit it for the purpose of “permanent improvements.” He believes this would increase transparency and prevent the General Assembly from simply appropriating funds for generic purposes. Second, in simplifying Article VIII, a single section should be dedicated to generally permit conduit issuances that are not direct obligations to the state. Lastly, the constitution should formally recognize the Treasurer's office as the administrator of the Sinking Fund Commission.

Mr. Metcalf concluded in requesting that the \$750,000 debt limitation should be done away with; and instead, a percentage should be used to level out with Ohio's economy.

Mr. Metcalf then shared with the committee the progress the Treasurer's office is making to instill transparency within the state. Starting in 2011, their office launched the *Treasurer's Transparency Project*, which has now led to OhioCheckbook.com. According to Mr. Metcalf, this website takes all state spending, from multi-million dollar road expenditures to a two dollar office supply expense, and places it all online for the first time in Ohio history.

*"State Debt Recommendations by the 1970s Ohio Constitutional Revision Commission"*

*Steven H. Steinglass  
Senior Policy Advisor  
Constitutional Modernization Commission*

Senior Policy Advisor Steven H. Steinglass presented a brief overview of the Article VIII State Debt Recommendations of the 1970s Ohio Constitutional Revision Commission (OCRC). Mr. Steinglass said it is unclear why the recommendations of the 1970s didn't meet with voter approval, and indicated that his comments will assist the committee in transitioning to the topics that will be covered at the next meeting.

Mr. Steinglass informed the committee that Professor Richard Briffault, of the Columbia University law school, will attend the May meeting of the committee. Prof. Briffault is an expert who can address many of the questions the committee has raised. Mr. Steinglass encouraged members of the committee to advise Commission staff of any questions they may have, in advance of the meeting, so that Professor Briffault will be prepared to answer them.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 3:00 p.m.

**Attachments:**

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Seth Metcalf
- Prepared remarks of Seth Metcalf

**Approval:**

The minutes of the March 12, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 4, 2015 meeting of the committee.

*/s/ Douglas R. Cole*

*Excused*

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Douglas R. Cole, Chair

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Karla L. Bell, Vice-Chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### FOR THE MEETING HELD THURSDAY, JUNE 4, 2015

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 1:30 p.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Davidson, Mills, Peterson, Tavares, and Trafford in attendance. Vice-chair Karla Bell attended via teleconferencing.

#### **Approval of Minutes:**

The minutes of the March 12, 2015 meeting of the committee were approved.

#### **Presentation:**

Chair Cole began the meeting stating that the committee has been dealing with the question of how Ohio compares to other states in relation to debt provisions in its constitution. He then introduced Professor Richard Briffault, of the Columbia Law School, an expert on state debt and state constitutions, to give a presentation on how Ohio compares to other states in the nation on these two issues.

*“State Constitutional Debt Limitation: A Wide Range of Options”*

*Professor Richard Briffault  
Joseph P. Chamberlain Professor of Legislation  
Columbia Law School*

Prof. Briffault began by stating that there were no debt provisions in state constitutions in 1787, and there are none in the United States Constitution. However, in the 1840s, these provisions began to be included in the state constitutions as a result of the canal movement, as well as the construction of turnpikes and railroads. At that time, states were making a major investment in

transportation infrastructure and had to borrow heavily. He said as a result of this borrowing, as well as other factors, there was a panic in 1837. The economy of the United States fell apart, and there ensued a severe economic depression. He said states stopped making money, some went bankrupt, and others had to pay off their loans to foreign banks and investors. Because a significant number of states failed to make their obligations, in the 1840s states began to address the question of debt in their state constitutions. Provisions were adopted which limited state governments in their financial transactions, including limiting their ability to invest, to take an equity share in private enterprises, on lending credit, and on acting as a surety. Limitations were also placed on the amount of debt that could be accumulated, as well as the procedures for entering into that debt. He said that the kinds of restrictions have changed over time, but some of the forms are still around, and many states still have dollar caps on debt that are the same as they were in the 1840s or 1850s.

In his research, Prof. Briffault said he has found a variety of approaches to debt among the states, recognizing that each individual state will have its own details. He provided the committee with an outline indicating the different ways states have dealt with the subject of state debt and then described those approaches.

One approach is a constitutional ban on debt. Some states impose a ban, saying there may be debt, or no debt, above a very low limit. Prof. Briffault observed that those limits are considered low today, but perhaps weren't low at the time the provisions were adopted. Such states allow exceptions for invasion, wartime, or emergencies. He said these limitations generally apply to long-term debt, which doesn't have to be paid within the year in which it was issued. He said that, in those provisions, short term debt is exempt from the limitations. He said that these limitations also do not apply to revenue bonds or other nonguaranteed debt. He said every state has some exception for revenue bonds in which the state does not pledge its full faith and credit but pledges some specific source of revenue. He identified one example of this as being where a state issues a revenue bond for building a bridge and indicates that the bond would be paid back by the bridge tolls but not from the general revenue. He said those types of arrangements do not require the state to apply its full faith and credit to the funding. He continued that one consequence of using revenue bonds, where the state only pledges the revenue of the facility that was created with the debt, is that this approach avoids the enactment of many constitutional amendments, because an amendment is needed for each new project.

With respect to general obligation bonds, he noted that Ohio seems to have amended its constitution to avoid the debt limit 18 times. Alabama possibly has done this more often. He said no state has learned to live without debt. If the state constitution prohibits debt, states will amend their constitutions to allow it. This then requires procedures for amending the constitution, but the complicated nature of enacting a constitutional amendment then becomes the real debt limit, rather than the low-level dollar limitation on state debt.

A second approach is on the other end of the spectrum, where states have no constitutional debt limit. In these states, the legislative body amends the debt limit, rather than the voters. As an example of this model, he noted this is the federal model. He said this approach is subject to statutory procedures. He said Vermont has this model, and still follows its eighteenth century constitution, which requires just an ordinary statute to issue debt in Vermont. He said in this

model, the issue doesn't go to the voters and there is no dollar cap. He said even in Delaware, it only applies to guaranteed long-term debt.

A third approach is in the center of the spectrum, in which there is legislative approval, requiring no super-majority or special vote, followed by voter approval by a simple majority. Prof. Briffault said in this model, the procedure is for classic guaranteed debt, and doesn't cover short-term debt, revenue bonds, or non-guaranteed debt. He said this is the procedure for general obligation, guaranteed debt. He said there are other ways of raising money without going through that procedure, however. One mainstream model is the voter-approval model. He remarked that there is no one model used by a majority of the states.

Another approach is where states impose a flexible limit on debt, which Prof. Briffault described as the "carrying capacity" model. In that model, the constitution makers think the state can carry a certain amount of debt and that voter approval is not needed. He said one way states calculate this "carrying capacity" is by considering debt service as a percentage of state revenues based upon a rolling 3 or 5 year average. These states cap the amount the state is allowed to pay, with examples of states following this model being Hawaii, Georgia, South Carolina, and Texas. He said the numerator varies based on what the state thinks is appropriate. He noted that one could also think about this model in terms of the amount of debt as opposed to the amount of the revenue.

A final approach identified by Prof. Briffault is where a state calculates the acceptable amount of debt or debt service based upon a percentage of state revenues, and then requires voter approval to go beyond that limit. He said an example of this model would be Pennsylvania and Washington. He commented that, in some sense, voter approval is a safety hatch because one can always amend the constitution. As Ohio and other states have shown, no matter what the constitutional procedure, there is always the possibility of a constitutional amendment, requiring a three-fifths vote by the legislature, plus voter approval.

Prof. Briffault summarized these approaches by indicating there are two "big pictures." One approach is where the legislature proposes and voters decide. That model draws on the notion that debt is long term, meaning that if the state borrows this year, it will be paying for the next 30 years. As a result, incurring debt is so significant that the decision to do so requires a constitutional amendment.

The other model, the "carrying capacity" approach, is binding but recognizes that some of these financial arrangements are very technical, and maybe should not be decided by voters on a ballot proposition basis. This model recognizes that it may be better to leave it to the legislature to decide how much debt to devote to roads and how much to prisons. He said that, as some states show, these two models can be combined.

Chair Cole then thanked Prof. Briffault for his remarks and posed a question. He said that in the flexible limits model there is no pre-designation as to how much spending will occur, asking whether Prof. Briffault has any empirical evidence as to whether there is a different mix of spending in those states where they do it differently. Prof. Briffault said he has no good empirical data, but that the model does play to the preferences of the voters in any given year,

and that the focus of the spending may change over time. He said there was a time when prison bond issues got approved, then that changed.

Chair Cole then asked whether there is any information that would inform someone as to whether these different models end up in there being a different total debt obligation of the state. Prof. Briffault said that many states have developed hybrid versions in which debt is legally non-guaranteed but de facto guaranteed. He said a common device is for the borrowing to be done by a public authority, but then the state will appropriate the public authority funds that are earmarked for the purpose of obligating debt. He said this is technically non-guaranteed debt, but in an appraisal it will be looked on as part of the state's debt obligation. He said that approach generally affects the form of the debt, and who is the issuer, but does not affect the amount of the debt. He said in those cases it is more of a connection between the level of the debt and the political culture of the state, or a relationship between the political culture and the constitution.

Chair Cole then asked whether, as a practical matter, states may be more likely to default on revenue debts than guaranteed debts, saying his understanding is that there is an interest premium you pay if there is non-guaranteed debt. Prof. Briffault said the premium is usually small, and that states don't default, although local governments do sometimes default. He said states hardly ever default, even for debts on which they are not obligated, saying they do what they have to do to pay off the debt.

Referring to Prof. Briffault's outline, committee member Representative Amstutz said his impression is that Ohio has numbers 1, 6, and some mix of limitations for special purposes. Rep. Amstutz asked whether a lot of states have restrictions on the amount for a non-guaranteed revenue bond. Prof. Briffault said not that many states do, but those that do tend to be states that have revised their constitutions recently. He said Hawaii's constitution has given detailed attention to revenue bonds, which other states don't do because revenue bonds are creatures of the bond lawyers and the courts. He said there have been debates among the courts as to what is a true revenue bond and when the state will be held responsible for them. Some courts lately have held that as long as the state protects itself it is "non-debt debt" and not subject to these restrictions.

Chair Cole commented that debt totals are higher now than 50 years ago. Prof. Briffault agreed that debt is higher, and that government does much more, and that infrastructure such as highways, transit, water and sewer, all need attention and are a major source of cost. He said at the same time, the base has grown, the Gross Domestic Product has grown, and that states have increased revenue rates and capacity. He said that state debt has gone up but that he is not sure whether it has gone up in relation to state economy. He said his impression is that there has been more political attention paid to state spending in the last 20 years, so that it is more controlled.

Chair Cole asked whether Prof. Briffault has a view about Ohio's state debt constitutional provisions, whether it fits within a pattern seen in other states. Prof. Briffault answered that he understands it looks messy, but that Ohio is in the middle in terms of its debt load, maybe even has a lower debt load than some comparably-sized states. He said he is not sure what that reflects. He noted that the Council of State Governments collects the data, which is three years

old, and that Ohio compares to Michigan, but has a lower load than Illinois and Pennsylvania. He said he has a strong normative view on this, noting that in a perfect world he would be inclined to advocate the flexible limit or the carrying capacity model, which trusts the legislatures as versus the voters, but that he does recognize the need to have a check on legislative spending. He said the hard part in terms of flexible limits is where the target number comes from. One would have to figure out what the share of revenue going to debt service ought to be. He said this could be done by looking at past years and data from sister states.

Prof. Briffault noted an experience he had with a citizen group that tried to determine what was the ideal number to reach between too much debt or too little debt. He said the group's goal was to be in the middle of the debt load relative to the state's revenue base, but that a provision that would achieve that goal proved impossible to write. He said it might be possible to write it as a statute or a guide, but that it was hard to turn it into constitutional language.

Chair Cole asked about whether it was possible to determine an "actuarially correct" debt load, and whether any states are looking at that. Prof. Briffault said he is not aware of any state that has done that in legal form, although the lenders and bond writers look at it. As an example, he cited state pensions, which are not considered to be bonded indebtedness, but are contractual obligations that are not treated as debt. Another example would be leased space, which is an obligation but that the state is getting something each year in the form of usable space. He said pensions are deferred compensation, and are not treated as debt in this sense but rather as a long-term obligation of the state.

Rep. Amstutz said the committee has been asked to look at the clutter in the debt article of the constitution, commenting that more than half the words in the constitution are associated with this. He asked what Prof. Briffault's advice or prediction is, if the committee is to address this question in terms of satisfying the bond underwriters and the voters.

Prof. Briffault said any change would have to account for obligations that continue to exist pursuant to commitments made long ago. He said he is not sure it is possible to take it all out but the state could continue to preserve the obligation by a provision that would allow the special procedure, the cap, and all obligations in prior amendments to continue to be honored. He said it is questionable whether that would work, but it could be preserved by reference. As far as what voters would approve, Prof. Briffault said he doesn't know. He said that in the 1970s they wanted to go to the floating cap without the prohibition, and it was rejected. He said going to a simple voter approval requirement may be more popular with voters; in that instance, the legislature would adopt a bond issue and voters would approve the spending as a bond issue and not as a constitutional amendment. Prof. Briffault continued that some states do have the flexible limit provision as an amendment, as opposed to a general constitutional provision. He said he doesn't see how that approach wouldn't be approved, but that would depend on the nature of the debate and how it is put together.

There being no further questions, Chair Cole thanked Prof. Briffault for his presentation.

The committee then discussed how it would proceed on the debt provisions. Chair Cole said he will circulate a memorandum indicating the different approaches the committee could adopt. He

identified those options as: (1) keep all as it is; (2) remove only obsolete provisions, with the related question of whether the sinking fund is an obsolete provision; and (3) as recommended by Deputy Treasurer Seth Metcalf at the committee's last meeting, rewrite and update Article VIII, Section 1, revising the debt limit so that it becomes the predominant debt limit on the state, imposing a larger general limit that would be an index number, and then retaining the sinking fund because it would again have the relevance that it had when first adopted.

Chair Cole said a preliminary decision should be made about whether to make changes, and then whether to follow the second or the third option he described. He said his plan is to have a vote on the conceptual part of this in the committee's next meeting. He said he would circulate the memo, and then have a discussion and vote. He said once the committee has done that, and adopted language, the committee can move on to a separate discussion of lending, aid, and credit provisions which would allow the committee then to move on to the next subject. Chair Cole asked what the sense of the committee is on that plan.

Committee member Jo Ann Davidson said she would prefer looking at options 2 and 3 as noted by Chair Cole, deciding not only which option is preferred, but what is the most practical. The decision has to be balanced when government debt is one of the huge issues, and the committee has to be pragmatic about that.

Rep. Amstutz agreed with Ms. Davidson that this is what the committee should pursue. He said he recoils at raising the number, and that voters won't like that. He said the voters need something they are comfortable with, and that he would like to push the envelope on option 3 and see how far the committee could get. He said he would like to clean up the article and get Ohio something that works going forward. Ms. Davidson said the committee should perfect option 2 if it does nothing else.

Chair Cole said that Office of Budget and Management Director Tim Keen could also be invited to present to the committee and may have thoughts on these topics. Chair Cole said he is hopeful the committee will reach a resolution on this issue. He noted that there is a significant interdependence between the various sections of Article VIII that must be considered.

Committee member Herb Asher said that, as the committee attempts to de-clutter and then not re-clutter the constitution, he likes Prof. Briffault's point about plans that allow the legislature to authorize debt in a way that would be statutory rather than constitutional. Mr. Asher said that method seems so reasonable but still protects the rights of the voters, at the same time wondering whether he was missing something. Senior Policy Advisor Steven H. Steinglass commented that a similar plan was considered in the 1970s but, for reasons unclear to him, the comment in the report indicated they rejected that kind of referendum approach because it would be too easy to approve debt.

Rep. Amstutz said that method looks like what Ohio does now. Chair Cole said that the difference is that a super majority is not needed. He said the other consideration is that if the legislature authorizes debt, statutory debt provisions could be scattered in the revised code and harder to find, so that it may seem easier to have them in the constitution. Chair Cole said this would be a fourth option as suggested by Mr. Asher, off of the presentation by Prof. Briffault.

He said one could put a supermajority requirement in the constitution and make the rest statutory.

Prof. Briffault referred to a list of constitutional provisions from other states, noting that Article IX, Section 15 of the Michigan Constitution comes closest to what Mr. Asher is referring to. He said that is how Michigan handles what is in Ohio's Sections 1, 2 (a, b, c, etc.), and 17. He said Michigan's is the kind of language one would use for that option.

Committee member Fred Mills commented that if it is done by statute, the legislature would have to involve the governor's office, but if it is a constitutional provision it goes to the voters and the governor is not involved. Chair Cole agreed but noted that issue could be bypassed through a constitutional provision.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 2:40 p.m.

**Approval:**

The minutes of the June 4, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the October 8, 2015 meeting of the committee.

*/s/ Douglas R. Cole*

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Douglas R. Cole, Chair

*/s/ Karla L. Bell*

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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, OCTOBER 8, 2015

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:06 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Clyde, Davidson, Mills, Peterson, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the June 4, 2015 meeting of the committee were approved.

#### **Presentation:**

*“Remarks Regarding Article VIII”*

*Tim Keen  
Director  
Office of Budget and Management*

Mr. Keen began by providing a brief history of Article VIII, indicating Ohio’s earliest debt was issued by the Ohio Canal Commission in 1825 to finance the canal system, with the General Assembly in 1837 passing the Ohio Loan Law intended to assist in the building of additional canals by loaning up to one-third of the cost of construction to Ohio businesses that were able to raise the remaining costs. Mr. Keen continued that, in practice, however, most of the loans went to railroad companies, spurring railroad growth in the state that competed with the canal business. Mr. Keen indicated that the end result of the debt issuance was an improved transportation system, but the debt also over-extended the treasury and the state had to borrow money to meet its expenses. Mr. Keen noted that, by 1839, Ohio had a deficit of more than one quarter of a million dollars and the Ohio Loan Law was repealed the next year. After reforms of the state’s taxation and tax collection system in 1846, the debt was refinanced and Ohio was able

to service the debt, but the concern over debt was a subject of discussion at the Constitutional Convention of 1850-1851. Mr. Keen pointed out that, as a result of this concern, Article VIII, Section 1 of the 1851 Constitution limits debt not expressly authorized by the voters to \$750,000.00.

Mr. Keen continued that Section 2, as well as select other sections of Article VIII, expressly authorize the purposes and amounts for which state debt may be issued, while Section 3 prohibits any other debt except that which has been expressly authorized. Further, he said, Section 4 prohibits the state from lending its aid and credit, and Section 5 prohibits the state from assuming the debts of any subdivision or corporation. Mr. Keen concluded that the state's challenging financial history at the time of enactment of Article VIII explains Ohio's conservative approach to debt, debt authorization, and debt repayment.

Turning to the present-day approach to state debt, Mr. Keen provided the committee with a summary of debt authorization provisions of Article VIII, as well as the amounts issued and outstanding under those provisions for debt that is backed by State of Ohio revenue (i.e., payable from the state treasury). He noted that, by 22 constitutional amendments approved from 1921 to the present, Ohio voters have expressly authorized the incurrence of state debt for specific categories of capital facilities, to support research and development activities, and provide bonuses for Ohio's war veterans. He said, currently, general obligation debt is authorized to be incurred for highways, K-12 and higher education facilities, local public works infrastructure, natural resources, parks and conservation, and third frontier and coal research and development.

He said non-general obligation lease-appropriation debt is authorized to provide facilities for housing branches and agencies of state government and their functions, including state office buildings, correctional and juvenile detention facilities, and cultural, historical and sports facilities; mental health and developmental disability facilities; and parks and recreational facilities.

Mr. Keen then directed the committee's attention to a table summarizing the state's outstanding debt and debt service paid from the General Revenue Fund ("GRF") as of the end of fiscal year 2015 (June 30, 2015). He noted that the state currently has \$9.35 billion in outstanding GRF debt and paid \$1.28 billion in debt service from the GRF in fiscal year 2015. He observed that fiscal year 2015 GRF debt service represents approximately 3.9 percent of fiscal year 2015 GRF revenue plus lottery profits.

With respect to the issuance of debt backed by state revenues, Mr. Keen described that two entities carry out the issuance functions as directed by the Ohio General Assembly under law – the Ohio Public Facilities Commission and the Treasurer of State. He said management and certain reporting of the state's debt are housed in the Office of Budget and Management, while payment functions and other reporting requirements are housed in the treasurer's office. He commented that the Sinking Fund Commission has not been an active issuer of state debt since 2001, and its constitutional reporting duties set forth in Sections 7 through 11 of Article VIII are performed by the state treasurer. He continued that the Sinking Fund Commission still technically exists and periodically must approve the reporting work done on its behalf by the treasurer's office.

Describing the bond issuing system, Mr. Keen noted that the Ohio Water Development Authority (OWDA), the Ohio Turnpike and Infrastructure Commission (OTIC), the Ohio Housing Finance Authority (OHFA), and the Ohio Air Quality Development Authority (OAQDA), issue bonds backed by or payable from dedicated revenue streams with no recourse to revenue of the state.

Prior to discussing potential modifications to Article VIII, Mr. Keen emphasized that Article VIII's framework for authorizing debt has served the state exceptionally well for more than 150 years. He said the process of asking voters to review and approve bond authorizations sets an appropriately high bar for committing the tax resources of the state over the long term, adding that Ohio's long tradition of requiring voter approval ensures that debt is proposed only for essential needs, and those needs must be explained and presented to voters for their careful consideration. He complimented voters, calling them "worthy arbiters," based on their having approved 26 and rejected 17 Article VIII debt-related ballot issues since 1900.

As a result of these considerations, Mr. Keen said he would propose to the committee that Article VIII works as intended, indicating he would not recommend wholesale reform. As support for this position, he noted the credit agencies' ratings that emphasize Ohio's conservative debt practice, and that those agencies refer to Ohio's debt burden as being both "moderate" and "affordable". He said Ohio's credit rating is in the second highest possible category, known as "AA+", which keeps the interest rates paid on state bonds very low.

Mr. Keen also addressed the suggestion that Ohio needs to modernize the \$750,000.00 debt limitation of Section 1 because the 5.0 percent annual debt service limitation set forth in Section 17 of Article VIII is insufficient. He said this suggestion pre-supposes that the state's existing 5.0 percent debt service limitation could be thwarted by back-loading debt or substantially extending its amortization period, for example issuing 100-year debt. Mr. Keen directed the committee to Exhibit 1 of his printed materials, noting that, with respect to extremely long amortization periods, Ohio's debt authorizations include maximum terms that range from 10 to 30 years, and in practice Ohio's bond issuances have consistently been amortized over periods shorter than those maximums. He added that Section 17 itself requires that the numerator of the 5.0 percent annual debt service limitation be the highest debt service in any future fiscal year, thus capturing any debt service peaks that may occur due to back-loading. He said for these reasons, the 5.0 percent debt service limitation has been and remains an effective limitation on both the amount of debt and debt service. He added that, in fact, the 5.0 percent threshold is a key factor in the state's favorable credit rating. As an additional factor, Mr. Keen observed that Section 1 of Article VIII is critical because the \$750,000.00 limit, when considered in conjunction with other key constitutional provisions, forms the basis of Ohio's balanced budget requirement.

Mr. Keen acknowledged opportunities for improving the administrative efficiency and cost effectiveness of state debt.

First, he noted the security backing the state's debt affects its credit quality and thus the level of interest rates the state pays to investors. He said the state's general obligation debt carries its highest credit rating, currently "AA+", allowing Ohio to perform well in achieving low interest

rates in the municipal bond market. He said, since 1973, constitutional amendments authorizing new state debt have generally provided for general obligation security, but that the state still issues several categories of lease-appropriation debt under Section 2i, a section approved by the voters in 1968. He said that while this debt is functionally no different from the state's perspective, the subject-to-appropriation requirement lowers its credit rating to "AA" and, as a result, the state pays a higher rate of interest, typically ranging from 0.1 percent to 0.3 percent, versus its general obligation counterpart. Because of this, Mr. Keen suggested that the lease-appropriation debt authorization provisions of Section 2i for housing branches and agencies of state government, and for mental health, developmental disabilities, and parks and recreation facilities, be replaced with a general obligation authorization for those purposes. He estimated that, for each \$100 million of debt issued over 20 years, this change to general obligation security would save state taxpayers \$1.5 to 4 million over the life of the debt.

Mr. Keen suggested another opportunity to modernize and improve efficiency involves the administration of the Sinking Fund as provided for in Sections 7 through 11 of Article VIII. Mr. Keen noted that the Commissioners of the Sinking Fund – originally consisting of the attorney general, auditor and secretary of state – were established in 1851 to administer a fund that would pay-off, or "sink", the state's then-existing canal and railroad debt, and to report their activities and progress to the governor and General Assembly. He said that over the years, the duties of the commissioners expanded to include administering and issuing many types of state debt, and in 1947 the governor and treasurer were added as members. Mr. Keen then described how, in the late 1950's, new state bond programs began to use dedicated bond service funds separate from the sinking fund, with debt service payments effectuated by the treasurer and the Office of Budget and Management. Then, in 2001, the General Assembly transferred bond issuance authority from the commissioners to the Ohio Public Facilities Commission. Mr. Keen said, as a result of these changes, all of the functions historically performed by the Commissioners of the Sinking Fund are now performed by other state entities, indicating that the sinking fund provisions of Article VIII are viable candidates for repeal. Mr. Keen noted, however, that if the committee recommends the repeal of the sinking fund provisions, it should consider replacing them with a provision that assigns necessary, ongoing debt-reporting functions to the treasurer of state.

Mr. Keen also addressed the committee's consideration of whether to recommend repeal or removal of inactive bond issuance sections. He said while he has no concern with allowing those provisions to remain, he recognized that some committee members view elimination of inactive sections as helpful cleanup, noting there is precedent for such repeal because Section 2a, authorizing compensation payments to World War I veterans, was repealed in 1953. He further observed that the Ohio Constitutional Revision Commission in 1972 recommended the repeal or modification of additional sections within Article VIII, although only Section 12, providing for a superintendent of public works, was later repealed. Mr. Keen suggested current sections that would be candidates for repeal as including 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k. He said repeal of these sections would shorten the length of Article VIII by 40 percent, but added there would need to be new language confirming the continuing validity of obligations issued under those sections.

Concluding his remarks, Mr. Keen said while some modernization could be effected, voters should continue to be the final arbiters of the purposes and amounts for which long-term debt of the state may be issued. Mr. Keen also provided the committee with draft language that would effectuate the potential changes noted in his testimony. He then invited questions from the committee.

Senator Charleta Tavares commented that the state is doing very well with its bond rating, but asked how it can do better. Mr. Keen answered that the next level up, the triple-A rating, is challenging to attain, and only a handful of states have it. He said the biggest challenge for Ohio will be the controls over how state debt is issued. He continued, noting that the economy of Ohio over the last 40 years has performed below the economy of the nation as a whole, and that this, combined with the fact that Ohio is a manufacturing-based economy, affects the state's performance. He said Ohio might be rated at double-A, rather than double-A plus, were it not for the long-time tradition of the state in effectively managing and controlling debt. He said if Ohio could attain a triple-A rating, it would reduce costs, but the realities of state economic performance over the last four years preclude that for the time being.

Sen. Tavares followed up, asking whether there are any Midwest states with a triple-A bond rating. Mr. Keen answered that Minnesota may have such a rating, but he doesn't know for sure.

Sen. Tavares then asked about Mr. Keen's remarks (on page five of his presentation) on debt amortizations, wondering if he was suggesting that Ohio should be reducing the number of years over which debt is amortized. Mr. Keen said the constitutional provisions offer a range, and that the general rule of public finance is that the cost of the asset is spread over a reasonable period, balanced against the cost the borrower pays. He said 20 years is a reasonable place to be.

Chair Cole asked for clarification, wondering whether Mr. Keen's position is that there is not much the committee could do regarding the language of Article VIII that would affect or improve the bond rating, meaning that the forces causing that are independent of the constitution. Mr. Keen answered that the limitations and parameters in the constitution support Ohio's current status, but there is not much that could be done in the constitution that would result in an upgrade.

Representative Ron Amstutz asked what types of expenditures would be outside the five percent debt limit. Mr. Keen said the five percent limit is for debt service paid from the GRF, measured against the GRF and the net lottery profits. He said this is most of the debt and most of the purposes he outlined. He said it doesn't include highway funds paid from the gas tax, the Third Frontier issue, or the Persian Gulf Conflict bond issue, for example. He said bonds subject to this limit are issued by the Ohio Public Facilities Commission or by the treasurer, but other bonds are from separate revenue streams and have no recourse to the GRF.

Rep. Amstutz commented he is not sure Ohio has a high bar, but, rather, may have a forest of bars and many mechanical hurdles because there are so many pieces and parts through the article. He asked whether, setting aside the "deadwood" in Article VIII, it would be possible or worthwhile in the remainder of the article to fashion something to modernize and clarify, but to keep checks and balances in place. Mr. Keen said he imagines that is possible, but that he comes

at it from the perspective that these provisions have served us well and that it is generally understood what is required and what they permit. As a result, he said, perhaps a modification is not necessary. He asked, if the provisions are generally working, why change them? He said his view is that they work and that a strict borrowing limitation without specific action by the people would deprive the state of an avenue to explore the issuance of new debt. He added there is also a value in having to follow specific steps before additional resources of the state are committed. He said he is generally comfortable with what Ohio currently has.

Following up, Rep. Amstutz asked whether it would work to keep the exact process and put it in the constitution but, for example, have the process presented to the voters on a schedule. Mr. Keen answered that if Rep. Amstutz is proposing a method or construction that would achieve the same end, he doesn't necessarily object to that. Rather, he said, his thought is that the very strict limitation on action without approval of the people has served Ohio well and he would want that reality or those parameters to stay in the constitution.

Chair Cole said the committee is considering two potential structures. One would be to take the \$750,000.00 limit and modernize it to a corresponding number based on inflation and other indicators, arriving at a new number that would be consistent with the amount of debt that Ohio currently carries. He continued that the other construct would be a constitutional amendment that would strip the debt limit from the constitution and make the debt limit more of a statutory process, with a requirement of a supermajority in legislature to authorize new spending, followed by a voter referendum. He said that approach would not amend the constitution, but, because the provision requires voter approval, would still have a mechanism for voter authorization.

In response, Mr. Keen commented that the latter plan seems to be a substantial change to get us to the same place we already are, wondering why go through the process to change the constitution to arrive at the same place. Regarding the former plan, to increase the \$750,000.00 debt limit, he said he likes that limitation, particularly as it has been amended, because that method acknowledges there is a wide range of public purposes for which it is appropriate to issue debt. He said Ohio has the ability under the existing framework to issue debt for things we need, and he likes the fact that we are limited. He noted the \$750,000.00 limit, in conjunction with other provisions in the constitution, also provides for a balanced operating budget and precludes the borrowing of money for the operation of state government. He observed that the lack of limitation in other governments, particularly the federal government, has created problems, and that a strict limit on debt is essential. He noted that the debt limitation "is the bedrock of what keeps our finances sound and strong in this state; we don't borrow for any reason for operating purposes. Some states do that, we don't and we shouldn't." He said for these reasons there is a very high bar to make changes in this space.

Chair Cole said one of the advantages that was discussed when that second approach was raised was that it would declutter the constitution; the structure that requires a supermajority in the legislature and voter approval becomes a real-time decluttering process, ensuring the next constitutional commission doesn't need to consider whether to have a new decluttering process. Mr. Keen said he is not particularly motivated by a need to remove the old provisions, so he hasn't contemplated this. But, he said, there may be other ways to do this. For example, could there be a "self-repealer" in place, like a sunset clause? He said it doesn't bother him to have

constitutional provisions referencing older issues; it provides a sense of what has gone before so we don't forget.

Committee member Kathleen Trafford asked Mr. Keen to provide some background on the "revenue stream bonds"—wondering if the number provided is the sum total of what Ohio has out there. She asked whether Mr. Keen has a sense of how big that pot is, noting that the revenue stream bonds are a commitment of revenue that is under the control of the state. Mr. Keen answered that revenue bonds mean that the taxes of the state are not pledged for that particular purpose. Noting that he didn't have that information at hand, he gave an example that, with regard to the turnpike, the revenues pledged are the tolls on the turnpike. He also noted that the Air Quality Development Authority issues bonds for pollution control projects at a private facility that wants to avail itself of tax benefits of that type of financing. He said the revenues are payments, with the state having a contractual arrangement associated with a particular project, on a project-by-project basis.

Regarding the Water Development Authority, he said that authority makes loans to political subdivisions of the state to improve water, sewage treatment or other facilities, and that local subdivision agrees to pay back the loan, with the stream of those loan repayments as well as assets on hand being used to pay back those bonds. He said these are loans the state makes to political subdivisions that are then paid back to the state, after which the state pays back the bond issuer. He said, in those cases, there is no recourse to the tax dollars of the state of Ohio.

Chair Cole asked whether these revenue stream bonds are different from the lease appropriation bonds that are paid with GRF resources. Mr. Keen said under Section 2i, essentially, the revenue stream bonds are not general obligation bonds and had no reference to state tax revenues per se. He said, for instance, in the case of bonds issued for developmental disability or mental health facilities the idea is that, practically, the state makes GRF appropriations to the agencies that benefit. He said these are called lease appropriation because the state pledges the bonds will be paid out of lease appropriations, but under another provision of the constitution they are only for two years at a time, so the bond issuers know it is subject to appropriation of these debt service payments. Mr. Keen said if the debt is not paid, there is recourse to other revenue streams that might be generated by those facilities. He then explained that conduit issuance bonds are those that are issued on behalf of another entity.

Ms. Trafford asked whether there is a source list of all revenue stream bonds. State Debt Manager Kurt Kauffman, who also was attending the meeting, answered that the Office of Budget and Management website has debt and debt service information for all of the state-backed debt, particularly data regarding both state debt and bond authority debt.

Chair Cole asked whether the revenue stream bond debt is part of the Article VIII, Section 17 debt. Mr. Keen answered that the five percent figure is exclusively tied to debt from the GRF. Also, the lease appropriation is included in the 5 percent limit.

Sen. Tavares asked about the current debt ceiling, to which Mr. Keen replied that the ceiling was 3.9 percent at end of the last fiscal year, with 3.2 percent being the last certification that the office made. He explained that every time there is a bond issuance, his office has to make a

certification pursuant to the constitution. He said the numerator is the debt service, the denominator is the GRF. The GRF grows over time; this last time it grew a little more than usual because of the Medicaid expansion, so the denominator grew.

Rep. Amstutz followed up on his earlier question by explaining that one goal of revising Article VIII would be to achieve efficiency. Mr. Keen answered that he has not contemplated the goal of making the article more efficient, but would be happy to consider it and engage in the discussion.

Chair Cole referenced Mr. Keen's comments regarding the sinking fund, asking whether he would give an example of his point about assigning the necessary, ongoing debt-reporting functions to the treasurer of state. Mr. Keen said that the sinking fund commission's duty is to meet two times a year and to issue an annual report on outstanding debt. He said this is the one remaining function of commissioners of the sinking fund that still occurs, and that the treasurer of state carries out this function. Mr. Keen said that function is important, and that his view is that the function should carry on, and should remain in the constitution. He said it might be possible to have the constitution reassign the function to the treasurer of state, who is doing it now, but that otherwise the provisions regarding the commissioner of the sinking fund should be retained.

There being no further questions for Mr. Keen, Chair Cole thanked him for his presentation.

### **Committee Discussion:**

Chair Cole then turned the committee's attention to a discussion regarding Article VIII. He said his plan for moving forward would be to present a memo he is finalizing that summarizes what the committee's course has been, with some updates. He said the current status of the possible courses of action focuses on four different approaches: 1.) do nothing; 2.) repeal obsolete provisions; 3.) revamp the \$750,000.00 limit; and, 4.) create a process where legislative and voter approval would still be necessary for new forms of debt issuance, but legislative and voter approval wouldn't be enshrined in the constitution to prevent future clutter. He said that approach would provide just the framework in the constitution, and the approval once obtained would not be part of the constitution. He said he would like to move into a phase where the committee provides a sense of how it wants to proceed. He said it makes sense to have a general agreement as to which approach makes the most sense, and then pursue the constitutional language associated with that. Chair Cole then invited comments from committee members.

Committee member Fred Mills commented that, based upon information provided by Deputy Treasurer Seth Metcalf at a previous meeting, there may be some outstanding and unreported bonds or coupons associated with some expired provisions. Chair Cole said the suggestion from everyone has been that some provision should be made in the constitution for the ongoing validity of issued, but not yet paid off, bonds.

Committee member Jo Ann Davidson said it would make sense to have some language prepared that could accomplish that. She further remarked that, as regards the sinking fund, it is a redundancy to have that provision there, as well as a provision requiring an ongoing reporting

duty. She said removing or revising those provisions appear to be the less complicated things to address. Chair Cole said that statement is both true and not true, explaining that if there are structural changes, there may be a purpose for a reinvigorated sinking fund, but if the goal is to return to the original plan with updated numbers, it may be important to retain the sinking fund. He said it depends on what the committee changes to and that it would be helpful to first have a sense of the general direction the committee wants to pursue first.

Ms. Davidson continued that she is “a minimalist” on this exercise, saying she thinks the committee is searching for an answer to a question that doesn’t exist. She said, “when you have something functioning extremely well for the state, anything that we do can have an unknown impact on that bond rating.” She said she would like to see the committee begin the drafting process and move on. Chair Cole said he agrees wholeheartedly, but feels that the approach of repealing obsolete provisions is good.

Chair Cole asked the committee if it had heard enough that additional summaries are not needed in order for the committee to vote. Rep. Amstutz said the four options described by Chair Cole aren’t mutually exclusive. He said the committee could easily get a consensus on getting two, and that he personally favors all three of the recommendations from the Office of Budget and Management, but that option precludes reinvigorating the sinking fund. Rep. Amstutz said he would like to pursue the four options that Chair Cole outlined, or some combination of these, and that his goal would be to keep all the concerns in place, including checks and balances. But, he added, the statement in the constitution could be a different mechanism.

Chair Cole asked if it would be worthwhile for the committee to vote, at least regarding the sinking fund question. Rep. Amstutz said if the committee takes Mr. Keen’s recommendation, it would be transferring the duties of the sinking fund to the treasurer.

Mr. Mills commented that he would like to see the memorandum being prepared by Chair Cole before taking further steps. Chair Cole agreed that he would be providing the memorandum soon after finalizing it.

Chair Cole asked the committee whether there is consensus regarding the sinking fund, and whether it may be worthwhile for staff to prepare constitutional language that would repeal those provisions and create a new section authorizing the treasurer to perform those functions. Mr. Mills noted that Mr. Keen had given the committee proposed language of this nature that he would ask staff to review that language.

Mr. Cole also asked about lease appropriation versus general appropriation bonds, asking whether there is a generalized sense of whether the committee would be comfortable with changing lease appropriation bonds into general appropriation bonds, as suggested by Mr. Keen. There being no objection, Chair Cole asked staff to work with language Mr. Keen provided with regard to the sinking fund and the reporting requirements for the treasurer, as well as Mr. Keen’s suggestions regarding changing lease appropriation bonds into general appropriation bonds. He requested that staff begin to work on proposed language that could be introduced at the committee’s next meeting. He added that the committee seemed to have a shared sense that it would be helpful to repeal unused sections, and that language would be needed on that. He said

it would be important to review Mr. Keen's proposed language, and that staff should highlight any legal concerns raised by the various possible courses of action for the next meeting.

**Public Comment:**

Chair Cole opened the floor to public comment, of which there was none.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:16 p.m.

**Approval:**

The minutes of the October 8, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the December 10, 2015 meeting of the committee.

*/s/ Douglas Cole* \_\_\_\_\_  
Douglas R. Cole, Chair

*/s/ Karla Bell* \_\_\_\_\_  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### FOR THE MEETING HELD THURSDAY, DECEMBER 10, 2015

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:12 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Clyde, Mills, Peterson, Tavares, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the October 8, 2015 meeting of the committee were approved.

#### **Committee Discussion:**

##### *“Article VIII (Public Debt)”*

Chair Doug Cole began by directing committee members to a proposed amendment that had been presented by Office of Budget and Management Director Timothy S. Keen at the committee’s last meeting, as well as a memorandum prepared by Senior Policy Advisor Steven H. Steinglass. He said, as he understands it, the proposed amendment (creating new Section 2t) would accomplish everything the committee had been talking about, but that staff felt that more direction was needed from the committee as to the committee’s consensus on how to address the elements of the proposal.

Chair Cole said that Item 3 in the memorandum outlines the committee’s discussion of the \$750,000 debt limitation that appears in Article VIII, Section 1, as well as the remarks of Deputy Treasurer Seth Metcalf, who wanted to return to the original vision and modernize that number, while Mr. Keen wanted to leave it untouched. So the action that is required is to have a discussion and vote on the question of whether the committee wants to retain Section 1 as it is, or to modernize and increase that debt number. He suggested that the committee have a discussion about what direction to take.

Committee member Kathleen Trafford said she thought there was a third alternative in which one would keep the existing debt limit but, instead of amending the constitution, authorize the debt limit to be exceeded upon a vote of the people. Chair Cole responded that the concept she described is part of a discussion of the various Section 2 provisions. But, he said, a proposal that would retain the limit as it is and provide for future additional issuances is a proposal he would like to disaggregate from the first question, regarding whether to increase that number. Chair Cole added it is a separate question whether the committee would prefer leaving Section 1 alone but authorizing additional expenditures so that the actual debt-issuance authority comes from some other source.

Senator Charleta Tavares said she would like to hear the advantages and disadvantages of increasing the \$750,000 debt limit, wondering if anyone has recommendations for that. She said it “looks silly to have \$750,000 as a limit; it is confusing to the public.” She asked what advantages are there in keeping that number.

Chair Cole offered to summarize the testimony on that issue from Mr. Metcalf as well as from Mr. Keen. He said Mr. Metcalf talked about the history of Article VIII, and the fact that Section 1 originally funded public works with a general authorization of \$750,000, which represented a large percentage of the state’s budget. According to Chair Cole, Mr. Metcalf said that a revision could go back to having a general debt limit that would not be tied to specific purposes, because every time the constitution is amended for specific purposes, the state’s hands are tied with respect to how the public debt can be used.

Chair Cole summarized Mr. Keen’s presentation as expressing the view that the current system, which has a low general debt limit with express authorizations, works well, and that the capital markets could view a change as possibly creating some interest grade consequences. Chair Cole said that changing the debt limit to a larger number could take away the benefit of the legislature having limitations, adding that the limit prevents an overconcentration of the debt on one or another set of uses. Chair Cole then welcomed Attorney Greg W. Stype, who was present in the audience, to comment on that view.

Mr. Stype responded that the debt limit is not so much a limit on capital financing, but rather allows the state to contract debts to supply “casual deficits or failures in revenue,” and that a way to think of it is as cash flow or general operating borrowing. But, he said, that contracting is limited to \$750,000, so the committee could look at the limit as one that has been upheld as a limitation on cash flow borrowing for “casual operating deficits,” rather than a limit on capital borrowing, which has things like the five percent debt service limitation under Section 17.

Chair Cole said he does not recall any testimony that the \$750,000 is not suitable for casual borrowing for operating expenses. Mr. Stype said the state has long managed cash flow in its operating funds using the total funds operating concept. Unlike California, a state that borrows billions for operating expenses, Ohio does not have to do that.

Representative Ron Amstutz asked, with that in mind, whether the committee might want to consider removing the \$750,000 limit and then referring to operating debt, basically prohibiting

going into debt for operating expenses. He suggested that method would incorporate Sections 2a, 2b, and the other “number 2” sections. Rep. Amstutz continued that his idea is to remove the words “\$750,000” and replace the number with some clarifying language that would parallel the concept expressed by Mr. Stype relating to operating expenses. He said this would modernize, but not really change, the effect of what is going on. He said, basically, the section would say the state cannot borrow for operating expenses except for what Article VIII, Section 2 says. He commented that “\$750,000 does not do us any good anyway so why not get rid of it?”

Sen. Tavares asked Mr. Steinglass his opinion of the matter under discussion. Mr. Steinglass said the \$750,000 limit is a function of the time in which it was adopted. He said no one contemplated in 1851 that the state would have to have a new process if the amount were to be exceeded, adding there was not even an attempt to borrow money outside the \$750,000 until the 1920s. Mr. Steinglass said he thinks there is a serious danger that if the \$750,000 limit is removed, the action would be misconstrued. He said the policy benefits from removing that limit are “minimal at best.” He continued that trying to increase the \$750,000 limit to some current number completely changes the way the number was originally used and would constitute a fairly significant change in how these issues are approached.

Chair Cole said, as he understands Rep. Amstutz, the idea would be to take the \$750,000 to zero, and then to say the state may not contract for casual debts. He added, if there is support in the committee for that idea, Chair Cole would want to contact the Office of Budget and Management to be sure that office does not have an issue with doing so.

Committee member Herb Asher commented that the \$750,000 has been misconstrued for a long time and constitutes Ohio’s balance budget restriction. He said, if the committee were to recommend getting rid of that limit, the narrative needs to be clear that the change would not weaken the balanced budget requirement. He would want it to be communicated that this is not a change in direction.

Chair Cole said it was Director Keen’s testimony that the \$750,000 limit acts as part of the balanced budget requirement, and if that number is reduced to zero, it would create an even more balanced budget requirement than Ohio currently has. But, Chair Cole said, his question is whether there is some function that would be affected if the \$750,000 is taken out, adding, otherwise, he would go along with Rep. Amstutz’s proposal.

Rep. Amstutz said the issue is not critical for him; rather, he was trying to suggest an alternative method for dealing with the issue.

Ms. Trafford commented that the limit is almost zero now, for all practical purposes, wondering why the committee would want to open the door to a change that would possibly create controversy and misunderstanding by voters.

Chair Cole asked for a motion regarding the \$750,000 limit. Ms. Trafford moved to retain the limit, with Sen. Tavares seconding the motion. Chair Cole then opened the floor for discussion.

Representative Kathleen Clyde asked, regarding the pending motion, whether the vote would constitute an official action by the committee. Executive Director Steven C. Hollon answered that this would be considered a preliminary vote, clarifying that the one thing the committee takes formal action on is a report and recommendation. He said the difficult conversation in this committee is the length of that report and recommendation, for example, will all of Article VIII be covered in one report and recommendation, or will the various topics and sections be addressed in separate reports and recommendations. Mr. Hollon said the committee's decision on how to document its conclusions will take into account the proposed amendment language prepared by Director Keen because there has been a lot of thought given to that. Mr. Hollon added that having separate reports and recommendations is difficult if the committee wants a big picture plan, and it will take time for staff to draft that. He concluded, saying the motion on the floor is for a preliminary vote.

Chair Cole said he wished to clarify his plan of how to move these changes through. He said he believes any change has to be done as a package because of the interaction of the parts of the article, noting that Director Keen's proposal encompasses all of the changes in one amendment. Chair Cole said the way he plans to proceed is to be certain that the committee has consensus on all of the sub issues, and then to propose a single amendment that will address all the items on which there is consensus. He added that the committee would then have the required two readings of the report and recommendation containing the proposed amendment before voting whether to issue the report and recommendation. He said the motion on the floor is not for a final vote because the committee does not have language before it yet.

Rep. Clyde said she would be more comfortable having a discussion rather than a roll call vote because the committee does not have written text in front of it. She said a roll call vote would formalize the decision, but for consensus purposes a discussion is more appropriate.

Chair Cole noted that committee members are not bound by their votes; rather, staff wanted to make sure of the committee's views because, although some discussions appeared to result in consensus, without a formal vote it was unclear. He said he wants to be sure where the committee is on these topics, and that, if there is a lack of consensus, he would like to know.

Chair Cole then asked the committee, as to the first issue regarding Article VIII, Section 1, whether there is consensus that the committee does not want to change the \$750,000 limit. Committee members acknowledged that this is their preference.

Chair Cole then directed the committee to the memorandum provided by Mr. Steinglass, specifically, Item 1 that identifies obsolete provisions. Mr. Steinglass commented that the amendment that is likely to come out of this process will be relatively short, but its component parts will lend themselves to separate reports and recommendations. He said the goal of the memorandum was to accommodate more focused discussions and a more focused ability to prepare reports and recommendations. Mr. Steinglass acknowledged important contributions by Mr. Metcalf, Mr. Keen, and Mr. Stype.

Mr. Steinglass directed the committee to the first five numbered parts of the memorandum, but putting aside the third part relating to the \$750,000 debt limit. He said the first part, relating to

obsolete provisions, is an area in which the chair has indicated there is consensus, but that staff needs specific instructions as to what the consensus is on. He noted that Section 2i should not be in that enumeration of obsolete provisions but Section 2k should be because Section 2i creates explicit authority for revenue bonds but also includes authority for certain kinds of general obligation bonds. Much of that authority has been moved to other provisions, but he has been persuaded that there is some residual impact such that Section 2i is not obsolete. He said he believes the consensus is that obsolete provisions should be removed.

Chair Cole said, to clarify, current Sections 2i and 2k are addressed in Director Keen's proposed new Section 2t(G), so that is why there is a mismatch between the memorandum and the proposed amendment. He said he believes it is inappropriate to characterize Section 2i as obsolete, and appropriate to add Section 2k to the list of obsolete provisions. So, he said, based on conversation from committee he thinks the goal should be to make the constitution more readable, and to give some useful civic purpose to remind voters of the purposes and reasons for past authorization of debt issuance, as well as informing the public of appropriate reasons for debt issuance.

Ms. Trafford said she agrees that the committee had consensus on the issue of obsolete provisions.

Rep. Clyde said she will want to think about removing obsolete provisions. She said a concern she has is ballot length, specifically whether the length of the proposed amendment would create confusion at the polls. She said she also wonders whether the Commission's work properly includes removing obsolete provisions. She said she is not sure where she is on that question.

Sen. Tavares said she understands Rep. Clyde's question, but that "our role as a Commission is to just look at the constitution and whether the provisions need to be changed." She added that some other committees of the Commission are looking at the topic of public engagement and might address that concern, but that this committee's role is to look at what needs to change in the existing document, rather than to consider what happens next. She said, issues such as whether the question is posed in a primary or general election, or whether the proposal increases or decreases the length of the ballot language only come up if the General Assembly passes a joint resolution, or if the public decides to put an initiative on the ballot.

Rep. Clyde said she understands that, but also thinks that these are some of the longest provisions, so she is trying to think them through, as well as considering the cost. She said she does not know where the Commission comes down so far on obsolete provisions. She said while she understands Sen. Tavares' point, she wants to think it over.

Mr. Asher agreed with Chair Cole that one goal is to make the constitution more readable, but that some people may be concerned about the historical context. He said he thought there had been a discussion previously in the committee about whether, if obsolete provisions are eliminated, they might be placed in the back of the constitution as footnotes or addenda. Chair Cole said the committee did have that conversation; but that his thought was that the committee is not responsible for how repealed amendments are published. With regard to Rep. Clyde's comments, Chair Cole said he is not sure the committee can get too far into the question of the

timing/political/ballot issue. He said the committee should move forward on the substantive questions and let others work out the timing issues.

Ms. Trafford said that the Coordinating Committee had engaged in a general discussion of obsolete provisions, and that her recollection was that there was an understanding that all committees would be looking to identify obsolete provisions. She noted there was an ad hoc committee, or “working group,” formed to consider obsolete provisions, but that Senator Larry Obhof had explained that that because this is such a big issue that has arisen in multiple committees, the working group is deferring to the individual committee to define obsolete provisions in its assigned articles. She said there is a consensus across all of the subject matter committees to look at the obsolete provisions as they come up across the committees.

Mr. Steinglass clarified that there is a working group that is tasked with identifying the topic of obsolete provisions and looking at common themes and issues, but the group was never intended to supplant the work assigned to the subject matter committees. Rather, he said, it was just a way of sharing ideas.

Chair Cole said the Finance, Taxation, and Economic Development Committee needs to provide some mechanism for the ongoing payment of bonds that still are in effect. He asked, regarding proposed Section 2t(G), whether there is consensus that obsolete provisions should be removed, but that sections containing remaining obligations retain their validity. He also noted that the proposed amendment also deals with Sections 7, 8, 9, 10, and 11, a separate issue that the committee will not address at this time.

Rep. Clyde said she is “on hold” with regard to that issue, but all other committee members agreed that removing obsolete provisions could be recommended for removal.

Mr. Asher asked whether Mr. Steinglass is familiar with how other states have handled the removal of obsolete provisions in their constitutions. Mr. Steinglass said some states never repeal anything but have an amendment afterward. He said, the committee could address the topic of assuring public access to the otherwise repealed provisions. He said there are schedules at the end of the constitution that are like uncodified law; they are binding but do not add to the bulk of the constitution. He said this is such a huge document; the best way is not to leave it in the constitution in terms of footnotes or schedules. He suggested the secretary of state might make repealed constitutional provisions on the website.

Mr. Steinglass said he is unsure how other states handle obsolete provisions, but that question can be researched. He added that repealed sections could be put on a website or otherwise publicized, with Sen. Tavares agreeing that online resources for researching repealed provisions could maintain that information, specifically mentioning the Ohio History Connection’s website. Mr. Steinglass said lawyers can always find this information, but the question is whether and how to provide it in a way that would allow the public to access it.

Chair Cole continued the discussion, referencing the other half of proposed Section 2t(G) in relation to Item 4 of Mr. Steinglass’ memorandum, which addresses the Sinking Fund. Chair Cole asked the committee whether it wants to keep the Sinking Fund. Mr. Steinglass noted the

Sinking Fund is a vestige of an earlier era. Today, the function is delegated to the state treasurer. He said no one has come up with a modern rationale for keeping it in place, noting there are a few other places in the constitution where the fund is referenced so that cleanup work may be needed, but that the Sinking Fund is not functional and has not been so for a while. Committee member Fred Mills added there may be revised code references to the Sinking Fund that the General Assembly may take up. Chair Cole asked the committee whether it thought the Sinking Fund provisions should be removed. Chair Cole noted there were no objections to this concept.

Chair Cole then directed the committee's attention to Item 5 in Mr. Steinglass' memorandum, referencing two kinds of bonds authorized under Article VIII. Mr. Steinglass explained that Section 2i is not in need of changes.

Chair Cole clarified he is referring to lease appropriation bonds. The lease appropriation bonds issue is that those bonds, once issued are subject to legislative approval to pay the outstanding indebtedness as opposed to full faith and credit bonds, and there is a certain interest rate penalty that the state pays for using lease appropriation bonds as opposed to general obligation bonds, despite the fact that never in the state's history has Ohio failed to pay its lease appropriation bonds. He said the question that was raised is whether it is appropriate or necessary for the state to preserve an option that it has no intention of ever exercising, especially since the forward looking interest rate is greater than the current one. He said the general idea of the proposed amendment is to convert lease appropriation bonds into general obligation bonds. He said he understood there to be a consensus that this was a good idea, and wondered if any committee members are opposed to an amendment that would accomplish this goal.

Sen. Tavares asked whether, under Item 6 of Mr. Steinglass' memo, there are any concerns about taking this action, whether it might affect future authorizations. Chair Cole noted that issue can be considered as parallel and separate from this issue. He said this issue is whether the existing authorization under Section 2i should be a lease appropriation obligation authorization or a general obligation authorization. He asked whether committee members were opposed to that proposal, and no committee members objected. Director Keen's proposed amendment seeks to accomplish that objective, said Chair Cole, noting that is one topic that Director Keen intended to encompass within proposed Section 2t.

With regard to Item 2 in Mr. Steinglass' memorandum, relating to the other general obligation authorizations, including Section 2k, Chair Cole noted these provisions have no sunsets but have a total debt outstanding mechanism that allows for new issuance based on retirement of existing debt. He said, in any event, these are provisions that still are current and active. He said the question raised is whether the committee wants to deal with these by putting in some kind of automatic sunset. He said his only comment is whether doing so is worth the effort; specifically, whether the committee wants to draft what would be a somewhat difficult-to-write provision.

Mr. Steinglass said he came up with the sunset idea. He said Mr. Stype recommended that the next time Ohio borrows more general obligation funds, the state could consider whether more sections are obsolete and deal with them at that time. He said he is not sure how a sunset would work, so that now he is backtracking on that suggestion.

Chair Cole said there is no consensus needed because the committee would not address that issue right now. He continued that a formal report and recommendation would leave those provisions unchanged. He said, as the committee considers a package deal, the report and recommendation would include a recommendation that those provisions remain unchanged.

Mr. Steinglass asked, rather than have one lengthy report and recommendation, could the committee issue a shorter report and recommendation concluding no change is necessary for the relevant sections. He said, organizationally, that makes it easier. Chair Cole said he has no issue with that.

The only remaining issue, said Chair Cole, involves the debt service limit in Section 17, which is Item 9 in the Steinglass memorandum. Chair Cole said Section 17 imposes a debt service limit, acting as an additional check on the state's ability to borrow. Ms. Trafford asked when Section 17 was adopted, to which Mr. Mills answered 1999. Ms. Trafford said that is another reason to leave it as it is.

Mr. Mills asked whether the numbers will have to be adjusted if sections are repealed. Chair Cole answered that, when sections are removed, the constitution states that they have been repealed.

Chair Cole then asked the committee's view on how to approach the future issuance of general obligation bonds. He said he sees two possible methods: (1) A *status quo* approach that would ask the voters each time for new authorizations; or, (2) A constitutional provision stating that additional issuances have to be presented to and approved by voters, but do not need to be reflected in the text of the constitution. He said the proposal keeps the *status quo* on that question. He wondered about the committee's consensus on that question.

Ms. Trafford said the committee needs a better way, and that so long as there is voter approval and there is a record of the voter's preferences, for instance if the treasurer keeps a record, it should not be necessary to add the text to the constitution. Ms. Trafford, along with Mr. Steinglass, noted that Professor Richard Briffault, who presented to the committee in June 2015, said Michigan has this kind of provision as do other states, so that there are models out there for doing that.

Chair Cole cautioned that there is a problem in just importing the Michigan approach into the Ohio constitution, and that the approach would have to be researched. He said, in any case future debt would have to be subject to Section 17.

Chair Cole asked Mr. Stype whether he saw a problem in changing the constitution so that future authorizations are not reflected in constitutional amendments. Mr. Stype answered that many amendments have done more than simply authorize general obligation bonds, but have provided legal authority for programmatic implementation. He suggested a situation in which there could be a referendum on general obligation bonds but if the subject that those bonds were to finance needed separate programmatic authorization, there would still be a need to have a constitutional provision for that authorization. Mr. Stype gave as an example the Third Frontier amendment, in which the state authorized the issuance of bonds to fund research and development, but because

the money was flowing to private entities, the amendment overcame the lending of aid and credit restrictions in the constitution. He said just authorizing general obligation bonds doesn't necessarily address some of the other constitutional hurdles that must be addressed to make that bond issuance fully effective in the future.

Ms. Trafford asked, if the committee is going to require voter approval, could not those conditions be part of it. Chair Cole said that would create a constitutional problem, and he is not sure a referendum would overcome that constitutional limitation.

Chair Cole described his plan for moving forward, saying he would like to be in a position at the next meeting to consider Director Keen's proposed amendment (Section 2t) in the materials. He said it is a lengthy proposed amendment that accomplishes the objectives on which the committee has consensus. He said he would like committee members to be in a position to move forward on a first reading with regard to the proposal in the materials, with a view to having a second reading and getting it to the Coordinating Committee sometime early next year.

Mr. Steinglass said there was a reference to amending Section 2i, but he is not sure that is what the proposal will be. He said the consensus is that Section 2i should be left alone, but proposed Section 2t accomplishes the goal of having a lease appropriation to general obligation change that Chair Cole had identified as a Section 2i change. Mr. Steinglass also noted he has a 50 state survey of how different states borrow money, and that it is a long document indicating that states have been moving away from constitutional amendments. He cautioned that it is difficult to look at other states in an area like this because so much of what goes on is tied to the state's history, economics, social life, and other factors. He agreed it is necessary to look at Michigan more closely.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:34 p.m.

**Approval:**

The minutes of the December 10, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 10, 2016 meeting of the committee.

*/s/ Douglas Cole*

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Douglas R. Cole, Chair

*/s/ Karla Bell*

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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MARCH 10, 2016

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 2:33 p.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Amstutz, Asher, Clyde, Davidson, Peterson, and Tavares in attendance.

#### **Approval of Minutes:**

The minutes of the December 10, 2015 meeting of the committee were approved.

#### **Report and Recommendation**

*Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18*

Executive Director Steven C. Hollon provided a first presentation of a report and recommendation regarding obsolete provisions in Article VIII. Mr. Hollon described that the report and recommendation reflects the committee's recommendation that Section 2t and Section 18 be added, that Section 2i be modified, and that Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, and 2k be repealed due to being obsolete. He said the committee reached a consensus regarding these recommendations based on conversations it held over the last six-to-nine months. He noted an earlier draft also recommended removal of provisions dealing with the sinking fund, but it was decided it was better to create a separate report and recommendation regarding those sections. He said that report and recommendation is not ready but could be provided as early as the next meeting of the committee.

Chair Cole drew the committee's attention to Attachment A to the report and recommendation, consisting of a draft of a proposed new section 2t. He asked Mr. Hollon if the editing marks in the draft provision are related to comments provided to the committee by Ohio Budget and Management Director Timothy S. Keen. Mr. Hollon said the draft is based on staff's understanding of Mr. Keen's proposal and what the committee was planning. Mr. Hollon confirmed that the draft revised a draft provided by Mr. Keen in order to provide consistency in the constitution and reorganized some of the prior draft for clarity. Mr. Hollon also noted that language regarding the duties of the treasurer of state was removed from the prior draft and would be addressed in a report and recommendation dealing with the sinking fund provisions. Mr. Hollon explained that the new draft created a separate "Effective Date and Repeal" paragraph out of a desire to maintain consistency with other parts of the constitution.

Chair Cole thanked staff for its work on the report and recommendation, asking whether committee members had comments or questions. There being none, Chair Cole then recognized Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State.

Mr. Metcalf urged the committee to adopt a revision that would add the following paragraph to Article VIII, Section 18:

The issuance of all direct obligations of the state subject to the limitation set forth in division (A) of section 17 of this article shall be authorized by a majority of the governor, treasurer of state, auditor of state, secretary of state, and attorney general, and it shall be the duty of the treasurer of state to issue, maintain, and ensure the timely payment of interest and redemption of principal on all such direct obligations.

Mr. Metcalf emphasized the importance of maintaining public accountability for decisions regarding the issuance of state debt, indicating that the state treasurer issues some general obligation debt, interfaces with rating agencies, and pays all the principal and interest. Mr. Metcalf stated "the current recommendation removes from the constitutional process the auditor of state, the attorney general, the governor, the treasurer, and the secretary of state," cautioning that "these elected executive officials must remain in Ohio's constitution to be directly accountable to Ohio taxpayers for general obligation debt."

Chair Cole asked whether Mr. Metcalf's comments were in reaction to a previous draft of the report and recommendation that would have removed provisions relating to the sinking fund. He wondered whether there is anything in the current draft of the report and recommendation that would have the consequences about which Mr. Metcalf is concerned.

Mr. Metcalf said he is fine with Section 2t as proposed, but that his recommendation needs to be done in addition. Chair Cole asked whether Mr. Metcalf's concerns are more related to a separate recommendation regarding the sinking fund provisions. Mr. Metcalf said "you can't treat them separately, because we are talking about general obligation debt. It is important to retain this accountability."

Chair Cole noted that if the committee were simply to address the obsolete provisions and the general obligation debt issue as described in the current draft of the report and recommendation, the sinking fund issue is separate.

Mr. Metcalf disagreed with this statement, saying the current draft does not require accountability.

Chair Cole said there is nothing under proposed Section 2t that would be different from other sections in the constitution. Mr. Metcalf said his comments are about general obligation bonds generally.

Representative Ron Amstutz said he was not finding an intersection between Mr. Metcalf's comments and the current draft of the report and recommendation. Mr. Metcalf answered his comments are generally applicable to all general obligation debt, and that proposed Section 2t delegates to the legislature the ability to make these decisions. He said, if the committee is going to put in new authorization language, it should require executive input.

Rep. Amstutz asked if it is correct that the issue will come into full view when the committee considers the sinking fund language.

Chair Cole agreed that the sinking fund discussion will involve the issue, but added that Mr. Metcalf's concern is that general obligation debt not become solely a General Assembly issue and not a statewide elected officeholder issue, and that the concern is raised by the draft proposal for Section 2t because it authorizes the General Assembly to provide by law for the issuance of bonds.

Chair Cole continued that what the committee has not addressed is the proposed Section 18 language that Mr. Metcalf put in front of the committee, which the committee would treat as a proposed additional amendment. He asked if Mr. Metcalf thought these issues could be taken up in isolation from the proposed Section 2t. Chair Cole said he thought the issues could be taken up separately.

Mr. Metcalf said it would be a "grave mistake" to take them in isolation, and that the committee has to take them up together.

There being no further questions for Mr. Metcalf, Chair Cole asked whether anyone else would like to comment, either on the report and recommendation or on the suggested amendment. There being no further comment, Chair Cole asked the committee for discussion.

### **Discussion:**

Chair Cole asked whether, procedurally, the committee is comfortable with moving forward with proposed Section 2t separate and apart from proposed Section 18, or whether they should be considered together.

Rep. Amstutz asked why the committee did not have the sinking fund language in front of it for consideration. Chair Cole explained that the issues were separated out because there were questions that needed to be decided about various sections of the constitution that are related to the sinking fund, and because the committee needs to consider what should take the place of those provisions if they are eliminated.

Chair Cole wondered whether committee members feel that the question of authorization of general obligation debt is a separate, third issue that could be dealt with apart from the question of whether to repeal obsolete provisions and what to do about the sinking fund provisions.

Rep. Amstutz said it appears that proposed Section 18 would inject two parts into the process. First, the General Assembly would make the decision about general obligation bonds, and then the statewide officeholders would do so.

Chair Cole asked whether the committee is comfortable with moving forward with Sections 2t and 18. He said his understanding is that, currently, the constitution does not provide for who has issuance authority for debt. So, he added, the question of who has issuance authority for debt is currently an issue of statutory rather than constitutional law. He said the question then becomes whether to constitutionalize the authority at some level rather than providing for it by statute. His sense is this is a separate issue, adding there are pros and cons associated with constitutionalizing that issue.

Committee member Jo Ann Davidson said another way of splitting them out would consist of eliminating debt issuance provisions that are obsolete, and keeping the issues related to revenue bonds and general obligation bonds. In relation to that, she asked what the committee would do with the sinking fund provisions. She asked who has the authority over the general obligation bonds – the General Assembly or the elected officers, or a shared authority. She wondered whether it would be the preference of the treasurer to put that designation in Section 18 rather than Section 2t.

Chair Cole said he does not think that was Mr. Metcalf's testimony. He said Section 2t only refers to certain types of general obligation bonds. He said he would want it to apply in all issuances, not merely those under 2t. Mr. Metcalf said he agreed with that characterization.

Chair Cole said, to the extent Section 2i still exists as a lease appropriation section, Article VIII, Section 18 as advanced by Mr. Metcalf would not apply to that. But, he added, with respect to all forms of general obligation debt it would apply. Chair Cole said that is another reason the issue could be considered separately. He noted the repeal of the obsolete sections is a very small part of the whole thing.

Chair Cole asked whether the committee would be comfortable moving forward regarding proposed Section 2t, separate and apart from the question about whether to constitutionalize authority for debt issuance.

Committee member Herb Asher said he would support the chair moving forward and he would like to have more of a discussion on Mr. Metcalf's proposal. He said he is not sure he fully

appreciates the first part of Mr. Metcalf's proposal, regarding what we currently do versus what Mr. Metcalf wants to see happen. Mr. Asher said if statewide executive officials now have this power and there is split control in those offices, or there is a difference in that majority versus the legislative majority, he worries that this could be politicizing things. He said he is not sure he fully understands the current status quo, and suggested that it be a discussion for the next meeting.

Rep. Amstutz said it appears that the "Effective Date and Repeal" paragraph is following a drafting convention that says to repeal sections there is a statement that says the sections are repealed. He added, if amending there should also be a repeal section. He said it will be important to explain that to the voters. Mr. Hollon commented that could be better explained in the report and recommendation.

Chair Cole noted there is precedent for repealing an obsolete section, referencing the repeal of a provision providing support for World War I veterans. He suggested it would be useful to review how that was done.

Representative Kathleen Clyde asked how these obsolete provisions were treated by the Constitutional Revision Commission in the 1970s. Mr. Hollon indicated that information needs to be part of this report and recommendation. Senior Policy Advisor Steven H. Steinglass said the 1970s Commission did not address the provisions because they were not obsolete at the time. He said the provisions being recommended for repeal were adopted from 1947 through 1987. Mr. Steinglass added the only section that was repealed was the World War I provision, which was repealed in 1953.

Rep. Clyde asked whether, if a repeal of the obsolete provisions goes to the ballot, the complete language of all the sections being considered for repeal must be presented to voters on the ballot. Mr. Hollon said staff would provide research to answer that question.

Chair Cole directed the committee to its next topic, relating to the sinking fund. He noted materials provided by staff outlining other state constitutional provisions regarding the duties of the state treasurer, as well as Ohio Revised Code sections relating to the duties of the sinking fund commission.

Chair Cole said the committee needs to consider how eliminating the sinking fund provision would affect the statutes. He added that the Sinking Fund Commission has not met since 2008, wondering who is carrying out the responsibilities described in the revised code.

Mr. Metcalf said the Sinking Fund Commission is not meeting, but there is a report that is issued by statewide officials. He said the duties are being fulfilled, but mostly by the treasurer's office. Mr. Asher asked who has the responsibility for what and under what authority. He asked that this be clarified for the next meeting, indicating that, to him, it seems like the treasurer's office is stepping into the breach.

Rep. Amstutz said it would seem that there is no actual meeting of the commissioners of the sinking fund; rather, state officials just sign off on a piece of paper.

Chair Cole said he is confused about what to do with statutory provisions if the sinking fund provisions in the constitution are removed. Ms. Davidson said it has been the practice of the Legislative Service Commission that when they are amending the Revised Code and come across archaic provisions, they usually try to clean up the language.

Chair Cole indicated that next time the committee would address the sinking fund provisions, also article VIII, Section 18, or would-be Section 19 as proposed by Mr. Metcalf. He said, in order to have a fulsome discussion, the committee would need insight about the statues. He asked the committee to come prepared to discuss whether to take a vote on this report and recommendation, and whether to move forward with proposed Section 2t in the absence of the consideration of the proposal by Mr. Metcalf. He added if the committee elects to move forward with proposed Section 2t, it will have a vote. He added the committee would be considering the question of the sinking fund and additional discussion about Article VIII.

Mr. Hollon suggested the committee also could take up the proposed Section 2t issues through this report and recommendation through its second presentation, and have a first presentation on the sinking fund provisions. He said the committee would not have to vote on either and could vote on both at the same time in May so that they would go on to the Commission jointly.

Mr. Steinglass noted that the joint resolution that gets proposed has the ability to set an effective date, so that if there were statutory provisions needing to be addressed the effective date could be set in advance to give time to address the statutory provisions. Mr. Steinglass added that, looking at the ballot in 1953 repealing the World War I veteran bonds, the ballot measure was short, and there was no need to reproduce the whole repealed provision because it was all work done in the schedule.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 3:43 p.m.

**Approval:**

The minutes of the March 10, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the April 14, 2016 meeting of the committee.

*/s/ Douglas R. Cole*

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Douglas R. Cole, Chair

*/s/ Karla L. Bell*

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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, APRIL 14, 2016

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:06 a.m.

#### **Members Present:**

A quorum was present with Chair Cole, and committee members Amstutz, Asher, Clyde, Davidson, Mills, Peterson, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the March 10, 2016 meeting of the committee were approved.

#### **Reports and Recommendations:**

Chair Cole announced that, prior to hearing presentations, the committee would hear a second presentation of a report and recommendation relating to a repeal of obsolete provisions in Article VIII and proposed new Sections 2t and 18.

*Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18*

Steven C. Hollon, executive director, then summarized the report and recommendation, describing the background of the sections relating to state debt, and explaining that Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k are now perceived as being obsolete because they have been fully issued and paid off, or because their bonding authority has lapsed due to the passage of time. Mr. Hollon indicated the report and recommendation describes the history of the constitution's treatment of state debt, as well as litigation relating to state debt provisions. He said the report and recommendation notes the various speakers who have presented to the

committee during its review of Article VIII. Mr. Hollon said the report and recommendation, in addition to proposing the repeal of provisions identified as obsolete, also recommends the adoption of new Section 18, which would require that any obligation entered into by the state under the authority of any section of Article VIII that is later repealed remains in full force and effect and continues to be secured in accordance with the original terms of the obligation. Mr. Hollon noted that the report and recommendation encourages the General Assembly to periodically propose to voters the repeal of debt authorization sections of the constitution that have become obsolete. Mr. Hollon described that the report and recommendation finally expresses the committee's proposal for adoption of a new Section 2t, in order to authorize the issuance of general obligation bonds that could be used to refund obligations previously issued under the authority of Section 2i, and to issue new general obligation bonds for purposes related to facilities for mental health and developmental disabilities, parks and recreation, and housing branches and agencies of state government, as set forth in Section 2i.

Chair Cole recognized Representative Kathleen Clyde, who asked whether there was information available about how repeal of the obsolete provisions might appear on the ballot.

Mr. Hollon said it may be helpful to refer to reports and recommendations by the Judicial Branch and Administration of Justice Committee, in which that committee recommended repeal of two different sections. In that instance, the committee did not propose any particular language because the entire section was being recommended for repeal. He added staff would continue to research this question and report back to the committee.

Rep. Clyde asked whether there is any insight as to why a 1977 attempt to repeal these provisions was unsuccessful when it was placed on the ballot. She also wondered when the repeal of Section 2a occurred.

Mr. Hollon answered that he is not certain why the 1977 attempt failed, and identified 1953 as the year in which Section 2a was repealed.

Representative Ron Amstutz suggested that one reason for the failure of the 1977 attempt was that the 1970s Commission was concerned about the bonds that were outstanding at that time.

Committee member Herb Asher agreed with Rep. Amstutz that this may be an explanation, adding that some people may have opposed repeal because, in removing those provisions, it would have erased history or failed to recognize the contributions of veterans. He said it might help, when eliminating provisions, to place an annotation that would explain what the repealed provision did. Mr. Asher asked if staff would provide research based on media coverage from 1977. Mr. Hollon agreed staff would look into the question.

Concluding that the remarks and discussion on all three reports and recommendations might be aided by the two presenters who were appearing before the committee, Chair Cole told the committee he would suspend further review of the reports and recommendations until after the presentations.

## **Presentations:**

Chair Cole then deviated from the agenda and turned the committee's attention to two speakers, one from the Office of the Ohio Treasurer, and the other from the Office of Budget and Management, who sought to provide remarks on the reports and recommendations under consideration by the committee.

*Jonathan Azoff*  
*Director of Office of Debt Management and Senior Counsel*  
*Office of the Ohio Treasurer*

Chair Cole introduced Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, who presented to the committee on the role of his office in relation to state debt.

Mr. Azoff began by describing that the state treasurer has three debt-related functions: (1) to oversee the debt issuance process for programs for which the treasurer serves as issuer; (2) to ensure the timely payment on the state's outstanding debt; and (3) to produce several legally-required reports, including the Commissioners of the Sinking Fund Semi-Annual Report.

Mr. Azoff indicated the treasurer's office is recommending several changes to Article VIII. First, he proposed the reference to the sinking fund in Section 2 should be changed to the word "state." He said this recommendation is based on the fact that a true "sinking fund" no longer exists.

He said his office also recommends the repeal of Sections 7 through 11 of Article VIII for the reason that the state no longer utilizes a sinking fund, with the duties of the Sinking Fund Commission now being performed by the treasurer's office. However, Mr. Azoff expressed the concern that removal of Sections 7 through 11 without replacement language clarifying who should perform those same duties would be detrimental to the interests of public accountability. He expressed that the committee's review provides the opportunity to recommend constitutional amendments that would reflect current statutory procedures.

In this regard, Mr. Azoff described that his office performs the ongoing roles and responsibilities of the Sinking Fund Commission, including paying debt service on the state's general obligation debt from the Commissioners of the Sinking Fund's designated bond service funds, and fulfilling the treasurer's reporting role as a member of the Commission of the Sinking Fund. He noted that the Office of Debt Management's operating expenses are funded through the Commissioners of the Sinking Fund GRF line item in the Treasurer of State's operating budget. As a result, Mr. Azoff urged the committee to recommend the retention of constitutional authorization for the performance of the Sinking Fund Commissioners' duties.

Mr. Azoff also commented regarding the committee's recommendation for a constitutional amendment that would allow the issuance of general obligation debt instead of lease-appropriation debt, suggesting that a factor that was not considered was the relative costs of the proposed amendment.

Explaining the difference between general obligation debt and lease-appropriation debt, Mr. Azoff said if the state were to default on a general obligation bond, bond holders would have the ability to bring an action to force the state to increase revenues, but lease-appropriation debt does not provide that remedy. Instead, he said, with lease-appropriation debt, the state's obligation to pay bondholders is entirely contingent on the General Assembly appropriating the funds needed to pay the debt service in its biennial budget.

He said, while there would be consequences to not paying the debt, lease-appropriation debt provides the state flexibility in the event of a fiscal emergency. He said the state pays only slightly more interest when it borrows on a lease-appropriation basis, and that investors are "familiar and comfortable with the state's lease-appropriation credit, and are willing to loan money on that basis for a similar rate, even though they lose the ability to force the state to raise revenue to repay the debt." He noted that Indiana uses more lease-appropriation debt than Ohio, yet its credit rating is the same.

Mr. Azoff asserted that the utility of lease-appropriation debt offsets other concerns, including that general obligation debt places more of a burden on taxpayers. He advocated exploring decreasing the state's general obligation debt and increasing use of the lease-appropriation debt.

Chair Cole asked whether the treasurer's authority for issuing debt under certain programs derives from statute. Mr. Azoff confirmed that this is the case.

Chair Cole additionally asked about the annual savings for the state if current lease-appropriation bonds were changed to general obligation bonds. Mr. Azoff said he does not know the amount offhand but it would be significant. Chair Cole indicated that the proposal before the committee does not require the bonds to be a particular type, but creates new issuance authority for the purposes in Section 2i and allows the General Assembly to choose between lease-appropriation and general obligation debt. Mr. Azoff said the concern of the treasurer with this proposal is that, when there is an option to borrow on a general obligation basis, the proposal supports its use and discourages lease-appropriation debt.

Rep. Amstutz asked why Indiana's use of lease-appropriation debt has not affected its credit rating. Mr. Azoff answered that Indiana has a similar constitutional structure, including a strict cap on state debt. He said, unlike Ohio that has repeatedly amended its constitution to authorize additional debt for specific purposes, Indiana has not amended its constitution other than to allow debt to be incurred on a lease-appropriation basis.

Chair Cole observed that Ohio's general obligation debt is more expensive than Indiana's general obligation debt, and Mr. Azoff agreed.

Senator Bob Peterson commented that he has no expectation that Ohio is not going to repay general debt obligations, saying he would rather have the money in the treasury because he expects Ohio will repay its debts. Mr. Azoff agreed that is reasonable analysis, saying he is not suggesting Ohio should not repay debts.

Chair Cole noted the state might want the option to default but will never exercise it, wondering why the state should pay for the option. Mr. Azoff said the state would be in dire fiscal circumstances in a scenario in which it did not repay its debt.

Committee member Kathleen Trafford asked whether there is a concern that giving alternative authority to issue general obligation bonds to the General Assembly would change the legislature's perspective on how much debt to take on, for the reason that general obligation debt is long term while the legislature has a short-term perspective.

Mr. Azoff suggested the rationale instead might be that, if it is possible to borrow more cheaply now, rather than later, the legislature would take the less-expensive route.

Mr. Asher expressed concern about the public perception of the rationale for using lease-appropriation debt, specifically because the state could save money now by using general obligation debt

Mr. Azoff said he is not sure the public discussion would be all that different, adding that the concepts should be in constitution even if the Sinking Fund is removed.

Mr. Asher rephrased his concern, stating that Mr. Azoff's message is that lease-appropriation debt renders the state less obligated on its borrowing. He said the message that will be received is that the state does not have to repay its debt. He said he is not sure that is a positive statement to make. Mr. Azoff said there is marginal increase in terms of cost, but the taxpayers are not responsible. Mr. Asher noted the flip side is that there is no binding commitment, in other words, the debt is not very well secured. Mr. Azoff noted that the bond market is still able to accommodate this type of debt.

Mr. Azoff having concluded his presentation, Chair Cole thanked him for his remarks.

*Kurt Kauffman  
Acting Assistant Director  
Office of Budget and Management*

Chair Cole introduced Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), to provide comment related to Article VIII.

Mr. Kauffman began by recalling for the committee two other presentations his office provided on previous occasions, one in June 2013 on the subject of state debt authorizations and limitations and, again, in October 2015, when OBM Director Timothy S. Keen provided comprehensive testimony on the history of Article VIII and Ohio's current debt position, and offered recommendations for potential modifications to Article VIII.

As background, Mr. Kauffman reviewed the framework within which state debt is authorized and issued. He said the debt authorization and issuance hierarchy includes, at the top, constitutional provisions that are approved by voters and that authorize the purpose and programs for which debt may be issued, set limitations on the amount of debt, establish the

pledged security, provide for a state tax exemption in some cases, and authorize the General Assembly to pass laws providing for the issuance of debt.

Mr. Kauffman said the next level in the hierarchy involves statutory law, which is enacted by the General Assembly and implements the debt issuance authority in accordance with the constitutional authorizations and limitations, establishes programmatic requirements, and identifies other requirements and funds.

Mr. Kauffman also described capital appropriations, which are enacted by the General Assembly in accordance with constitutional and statutory parameters, and which are intended to provide the needed amount of bond issuance authority to the bond issuer for a particular bond funded program.

Mr. Kauffman said the hierarchy finally includes the bond issuer, which is established by state law, and approves the issuance of a specific series of bonds to fund enacted capital project appropriations and establishes bond issuance terms and conditions.

Mr. Kauffman noted that the constitutional debt authorizations, with the exception of debt for veterans' bonus programs, provide that the General Assembly provide by law for the issuance of debt, including designation of the bond issuer, thus empowering the General Assembly to modernize debt issuance functions as deemed necessary.

According to Mr. Kauffman, this approach has allowed the state to consolidate bonds that share the same security and source of payment within a particular state bond issuer, thus saving money. He provided an example from 2000, when the General Assembly eliminated the Sinking Fund Commission as a bond issuer and consolidated the issuance of state general obligation bonds paid from the General Revenue Fund (GRF) under the Ohio Public Facilities Commission (PFC).

Mr. Kauffman explained that the PFC, comprised of the governor, treasurer, auditor, secretary of state, attorney general, and director of OBM, has served as the state's most active debt issuer since its creation in 1969. Mr. Kauffman described how, in 2012, the General Assembly eliminated the Ohio Building Authority (OBA), transferring OBA's lease-appropriation bond issuance responsibility to the state treasurer who issues similar types of subject-to-appropriation debt.

Mr. Kauffman said, currently, two entities perform debt issuance functions as provided for by law, the PFC and the state treasurer. He explained that PFC issues the state's general obligation debt backed by the GRF for K-12 and higher education, local public works infrastructure, natural resources, clean Ohio conservation, third frontier, and coal research and development. He said the treasurer has the responsibility for issuing highway general obligation debt and lease-appropriation debt for the departments of transportation and public safety, all payable from highway user receipts, as well as major new transportation infrastructure debt that is secured by and payable from federal highway grant receipts. In addition, Mr. Kauffman said the treasurer also issues lease-appropriation debt payable from the GRF for state office buildings, correctional and juvenile detention facilities, cultural and sports facilities, mental health and developmental

disability facilities, and parks and recreational facilities. He added that the treasurer serves as a conduit issuer for a number of bond programs that are not directly secured by state revenue.

Mr. Kauffman described the debt management and administration role of OBM is to serve as staff of the PFC, and to coordinate the scheduling of state bond issuances, review or approve debt service payment schedules, and act as lead agency for communication with credit rating agencies. He said the role of the treasurer's office is to pay state debt and fulfill certain reporting requirements related to state debt.

Addressing the draft reports and recommendations before the committee, Mr. Kauffman said OBM supports the proposal to repeal the identified inactive bond issuance sections and to protect the holders of any outstanding bonds issued under those sections by confirming the bonds continue to be secured pursuant to their original terms. He said OBM also strongly supports modernizing the lease-appropriation debt authorizations of Section 2i by replacing them with a general obligation debt authorization. He noted this change would be consistent with all GRF-backed debt authorizations passed by the voters since 1973, and would save taxpayer dollars by improving the credit rating and thus lowering the interest cost on all future issuances of debt for these purposes.

Mr. Kauffman said OBM also supports the repeal of Sections 7 through 11 of Article VIII, dealing with the Sinking Fund, because all of the functions historically performed by the Commissioners of the Sinking Fund are now defunct or, in the case of the Sinking Fund report required under Section 11, performed by other state entities. Mr. Kauffman reiterated Mr. Keen's suggestion that the debt reporting requirement be replaced by a new provision that would assign necessary debt reporting functions to the state treasurer.

Addressing a suggestion by Seth Metcalf, deputy treasurer, that removing the Sinking Fund would compromise public accountability in the debt issuance process, Mr. Kauffman said OBM does not share that concern, instead acknowledging that the interests of the public are protected by the fact that citizens always must approve debt authorization by voting for constitutional amendments. He noted multiple steps that protect public participation, among them that voters must approve a ballot issue, that the General Assembly's legislative process welcomes public comment, and that the PFC holds open meetings for the purpose of passing bond issuance resolutions.

Mr. Kauffman said these multiple opportunities for consideration of public comment protect the interests of public accountability, adding that unnecessary changes would risk creating uncertainty and confusion in the municipal bond market.

Finally, Mr. Kauffman said OBM supports the proposal to retain Article VIII, Sections 1 and 3 in their current form, and to revise Section 2 only to eliminate what would be an outdated reference to the Commissioners of the Sinking Fund.

Mr. Kauffman having concluded his remarks, Chair Cole asked him about the savings for the state if general obligation debt were issued instead of lease-appropriation bonds. Mr. Kauffman

said that for each \$100 million of bonds, the savings would be from \$1.5 to \$4 million, a savings he said would repeat each year, with there being a cumulative effect.

### **Reports and Recommendations (Cont'd.):**

Having received the testimony of the two presenters, the committee returned to its consideration of the reports and recommendations.

#### *Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18*

The committee having had a second presentation of the report and recommendation at the beginning of the meeting, Chair Cole said the committee now would proceed to a vote on the report and recommendation, adding that the final version would include the discussion of presentations that occurred at both the March and April 2016 meetings of the committee.

Chair Cole noted that when Mr. Metcalf presented to the committee in March, he proposed additional amendment that would constitutionalize the functions of the state treasurer. He asked Mr. Azoff whether the committee could consider that question separately.

Mr. Azoff answered that the proposed amendment provided by Mr. Metcalf is intricately tied to the recommendation to repeal Sections 7 through 11. Regarding proposed Section 2t, Mr. Azoff said there is overlap because Section 2t does not express which state actor is performing the issuance function.

Chair Cole asked how the role of issuer has developed. Mr. Azoff said it seems to have been an evolution over time, with the Sinking Fund Commissioners initially performing that duty, with the PFC following. He said he is not sure there was a coherent approach, but confirmed that it is now controlled by statute.

Responding to this issue, Mr. Kauffman said there are exceptions for the veteran's bonus payments, which are designed to be self-implementing. He said those sections are longer and include implementation provisions.

Chair Cole then asked for a motion to issue the report and recommendation for Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18. Committee member Fred Mills so moved, and Sen. Peterson seconded the motion.

A roll call vote was taken, with the following members in favor:

Doug Cole  
Rep. Amstutz  
Herb Asher  
Jo Ann Davidson  
Fred Mills  
Sen. Peterson  
Kathleen Trafford

Chair Cole announced that the vote passed unanimously.

*Article VIII, Sections 1, 2, and 3*

Chair Cole then recognized Mr. Hollon for the purposes of providing a first presentation of a report and recommendation on Article VIII, Sections 1, 2, and 3.

Mr. Hollon provided a summary of the report and recommendation, which expresses the committee's view that Sections 1 and 3 be retained in their current form, with Section 2 being revised to remove a reference to the Sinking Fund. Mr. Hollon described the history and purpose of the three sections, noting that Section 1 provides the \$750,000 debt limit that has been in effect since the adoption of the 1851 Ohio Constitution, with Section 2 allowing an exception to that debt limit in the case of civil unrest, and Section 3 emphasizing the state's strong interest in debt avoidance. Mr. Hollon also noted the report and recommendation provides information regarding the activities of the Ohio Constitutional Revision Commission in the 1970s (1970s Commission), as well as litigation related to these sections. He said the report and recommendation also summarizes the presentations to the committee on the topic. He then summarized the conclusions of the committee as expressed in the report and recommendation, noting that the committee was recommending a change to Section 2 to reflect that the Sinking Fund and Sinking Fund Commission sections of the constitution (Sections 7 through 11) were being recommended for repeal, as described in a separate report and recommendation. Thus, the report and recommendation recommends the reference to the Sinking Fund be removed from Section 2.

Chair Cole asked for public comment on the report and recommendation, and there was none.

*Article VIII, Sections 7, 8, 9, 10, and 11*

Chair Cole then asked Mr. Hollon to provide a first presentation on a report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11.

Mr. Hollon indicated the report and recommendation expresses the committee's view that sections of Article VIII related to the Sinking Fund be repealed for the reason that those functions are being performed by other state officers and agencies. Mr. Hollon described that the report and recommendation explains the background of Sections 7 through 11, as well as noting an unsuccessful recommendation by the 1970s Commission to eliminate these sections. Mr. Hollon said the report and recommendation also outlines the presentations to the committee on the topic. He said the report and recommendation expresses the conclusion of the committee that the provisions are obsolete because the purpose of the Sinking Fund and the duties of the Sinking Fund Commission have been replaced by other state entities primarily through authorizations contained in constitutional amendments approved by the electors of the state; and by statutory enactment made pursuant to the authorizations contained in these subsequent constitutional amendments.

Chair Cole noted that the next meeting will include a discussion of the two reports and recommendations that had been subject to a first presentation. He said he would hold the report and recommendation related to authorization of debt obligations until the committee has the

opportunity to discuss and vote on whether to issue the other two reports and recommendations, with all three reports and recommendations then being forwarded to the full Commission as a package.

Mr. Mills asked whether the next meeting of the committee would occur in May or June.

Mr. Hollon noted that the committee could meet in May, and that, if this occurs and the committee votes out the remaining two reports and recommendations, the package might be taken to the Coordinating Committee that same day and possibly to the full Commission in June.

Chair Cole said he is open to meeting in May if committee members are available. He said the committee would tentatively plan on May meeting, asking members to be prepared to discuss the reports and recommendations. He invited the presenters to attend the May meeting in order to support the committee's discussion.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:33 p.m.

**Approval:**

The minutes of the April 14, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the May 12, 2016 meeting of the committee.

*/s/ Douglas Cole*

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Douglas R. Cole, Chair

*/s/ Karla Bell*

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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 12, 2016

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 12:06 p.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Karla Bell, and committee members Amstutz, Asher, Clyde, Mills, Peterson, and Tavares in attendance.

#### **Approval of Minutes:**

The minutes of the April 14, 2016 meeting of the committee were approved.

#### **Reports and Recommendations:**

##### *Article VIII, Sections 1, 2, and 3*

Chair Cole recognized Steven C. Hollon, executive director, for the purposes of providing a second presentation of a report and recommendation on Article VIII, Sections 1, 2, and 3.

Mr. Hollon noted the recommendation is for Sections 1 and 3 to be retained in their current form, with Section 2 being revised to remove a reference to the Sinking Fund. Mr. Hollon described that Section 1 provides the state's \$750,000 debt limit, with Section 2 allowing an exception to that debt limit in the case of civil unrest, and Section 3 emphasizing the state's strong interest in debt avoidance. Mr. Hollon summarized the conclusions of the committee as expressed in the report and recommendation, which are that Section 2 should be revised to reflect that the Sinking Fund and Sinking Fund Commission sections of the constitution (Sections 7 through 11) were being recommended for repeal, as described in a separate report and recommendation. Thus, the

report and recommendation recommends the reference to the Sinking Fund be removed from Section 2, but that Sections 1 and 3 remain in their present form.

*Article VIII, Sections 7, 8, 9, 10, and 11*

Mr. Hollon provided a second presentation of a report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11.

Mr. Hollon indicated the report and recommendation expresses the committee's view that sections of Article VIII related to the Sinking Fund be repealed for the reason that those functions are being performed by other state officers and agencies. He said the committee's conclusion, as described in the report and recommendation, is that the provisions are obsolete because the purpose of the Sinking Fund and the duties of the Sinking Fund Commission have been replaced by other state entities primarily through authorizations contained in constitutional amendments approved by the electors of the state; and by statutory enactment made pursuant to the authorizations contained in these subsequent constitutional amendments.

Chair Cole then opened the floor for public comment regarding the two reports and recommendations. There being none, he entertained a motion by committee member Fred Mills to issue the report and recommendation, which was seconded by Senator Bob Peterson. Representative Kathleen Clyde clarified that the report and recommendation for Article VIII, Sections 1, 2, and 3 was the one being voted on, and a roll call vote was taken. The committee voted unanimously to issue the report and recommendation for Article VIII, Sections 1, 2, and 3.

Chair Cole then entertained a motion by Ms. Bell to issue the report and recommendation for Article VIII, Sections 7 through 11, a motion that was seconded by Representative Ron Amstutz. There being no discussion by the committee, a roll call vote was taken, and the motion passed unanimously.

Chair Cole expressed his appreciation to staff for their work on the reports and recommendations, and indicated that the two reports and recommendations, along with the report and recommendation voted on by the committee at its April 2016 meeting relating to Article VIII, Sections 2b through 2k, and Proposed Sections 2t and 18, would be forwarded to the Coordinating Committee for its approval and then to the full Commission in the coming months.

**Next Steps:**

Chair Cole then turned the committee's attention to the next steps it wished to take with regard to the remaining constitutional provisions assigned for its review. With regard to Article VIII, he said the committee had not yet addressed Sections 4, 5, and 6, nor had it looked at Sections 13 through 16, provisions that, like Sections 2l through 2s, authorize additional spending. He said that one question is whether the committee should finish Article VIII before turning to Article XII.

Chair Cole noted that Sections 13 through 16 probably would not be recommended for change. Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), who was in the audience, indicated that his office had looked at Sections 13 through 16 and decided not to propose changes.

Chair Cole then called on Gregory W. Stype, who was present in the audience, for a summary of Sections 13 through 16, which deal with non-tax supported bond authorization for industrial development and housing, and for a tax-supported coal development program. Mr. Stype, an attorney with Squire Patton Boggs (US) LLP, serves as bond counsel to the Ohio Public Facilities Commission.

Mr. Stype indicated that Section 13 provides the authority for the state to issue industrial development bonds for economic development projects, relying on the credit of the private entity that is benefiting from the bond issue. Section 13 contains a specific prohibition against pledging tax dollars to pay these bonds, which once were more prevalent than today because they would confer federal tax exemption status. However, he said a change in federal tax law has constrained this kind of borrowing, so those bonds are not issued as frequently as they were. He said examples include the state's Air Quality Development Authority, or the Port Authority, which are agencies that issue bonds to support pollution control or economic vitality measures.

Mr. Stype said Section 14 was the first of two sections authorized by voters in connection with tax-exempt bond financing for housing. He said the first section enacted was a more limited program, a "loans to lenders" program, with bonds authorized by federal tax law to benefit a first-time homebuyer program in Ohio. Under that program, large numbers of bonds would be issued, with the savings passed through to home buyers, and being lent to home buyers through the banks. He said the authority to issue the bonds was not tax supported, and benefited multifamily housing projects. He said it is an active and vital program at this time.

Regarding Section 15, Mr. Stype said this is a program authorized for state coal development bonds, and is misplaced because it is not tax supported like Sections 13, 14, and 16. He said the bonds are issued by the state for the purpose of making loans and grants to support clean coal technology. He said this is an active program, with debt service paid out of the General Revenue Fund.

Mr. Stype described Section 16 as broadening the Section 14 housing authority to non-lenders. He added Section 16 also provides some authority for local governments to issue housing bonds that have some measure of tax support.

Mr. Mills asked Mr. Stype whether Section 15, because it does not belong with the other sections, should be renumbered, but Mr. Stype expressed that many statutes, regulations, and other documents refer to it, so that renumbering could cause confusion.

There being no further questions for Mr. Stype, Chair Cole thanked him for his assistance, and announced that staff could begin preparing a report and recommendation recommending no change to Sections 13 through 16.

Committee member Herb Asher suggested that the committee seek a response from the Office of the Ohio Treasurer, to be certain there would be no problem in retaining Sections 13 through 16 in their present form. Chair Cole requested that Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, who was present in the audience, look into the question and respond to Chair Cole with any concerns, and Mr. Azoff agreed.

With regard to Section 17, Chair Cole said the provision provides a cap on the debt service that may be paid out of the General Revenue Fund, which is generally equal to five percent. Mr. Kauffman commented the issue had been raised in an earlier presentation by Mr. Kauffman in 2013, as well as in a presentation by OBM Director Timothy S. Keen. Mr. Hollon asked that Mr. Kauffman locate and provide any written materials related to those presentations, so that the committee could be certain to have them as part of the record.

Senior Policy Advisor Steven H. Steinglass noted that the committee had not looked at Sections 2l through 2s, and that it may wish to do so for the same reason it is reviewing Sections 13 through 16. Chair Cole agreed, saying the committee would need staff to prepare a separate report and recommendation for no change to Sections 2l through 2s.

Chair Cole asked committee members for suggestions as to any presentations they might like related to Sections 4, 5, and 6. Ms. Bell said she would like more information about the JobsOhio litigation that is ongoing related to those sections.

Senator Charleta Tavares said the committee could have some testimony but would need advice as to who might have a background on this area of the constitution, and whether there are interested parties who might want to present.

Chair Cole asked Mr. Stype who he might recommend, and Mr. Stype agreed to suggest someone. Mr. Stype continued that the full scope of Sections 4 and 6 is worthy of the committee's understanding. He said a number of the sections of the debt issuance authority that have been approved by voters have created express exceptions to Sections 4 and 6 that the committee may want to note. Chair Cole said an example of this is Section 14, with Mr. Stype adding that Section 15 also requires an exception.

Sen. Tavares asked whether Mr. Stype was referring to an exception for housing as a public purpose, and Mr. Stype agreed.

Ms. Bell said she would like to see all the exceptions that have been put in place. She said she does not know the stage of the JobsOhio litigation, but if there are documents relating to each side's positions, she would be interested in reviewing them.

Chair Cole said three lawsuits involving JobsOhio have been decided on standing grounds rather than on the merits. He said he will work with Mr. Hollon to get the relevant materials. He said at the next meeting, Mr. Stype could testify on Sections 4, 5, and 6, and these materials could be provided in connection with that review. Sen. Tavares said she also would find some speakers to discuss Sections 4, 5, and 6.

Chair Cole requested that if members have ideas regarding additional provisions that could be added to Article VIII, this would be an appropriate time to consider those ideas, and to forward them to Mr. Hollon.

He said the committee's the two remaining articles for review are Article XII (Finance and Taxation), and XIII (Corporations), asking if committee members had any view as to the direction the committee should take.

Mr. Mills said there are at least two issues that have been litigated over the years and may engender discussion: the motor vehicle and fuel tax, and the tax on food.

Chair Cole suggested the committee consider the remaining parts of Article VIII at its next meeting and then move to taxation in Article XII, asking committee members to suggest persons who could testify.

Chair Cole said there is one remaining issue to address at the next meeting, which is the role of the treasurer and what might take the place of the Sinking Fund provisions. He said that topic will be on the agenda and that he will circulate a memorandum regarding it. Mr. Azoff noted his office has made a proposal in that regard, agreeing to have someone there to assist with the committee's review.

Mr. Steinglass said the committee may want to consider different methods for borrowing money, as suggested by Professor Richard Briffault in presentation to the committee in June 2015. Chair Cole explained that Professor Briffault had described constitutional models used in other states in which categories of state spending are presented to voters for their approval but that the actual authorization is not required to be memorialized by a constitutional provision. He said that method prevents the addition of multiple sections authorizing debt that later must be repealed so that the constitution does not grow to an unwieldy size.

Mr. Steinglass suggested that topic could be considered as a proposed Section 19, indicating he has research that could be presented to the committee later in the summer. Chair Cole agreed that this is a good plan.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 1:04 p.m.

**Approval:**

The minutes of the May 12, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 9, 2016 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, JUNE 9, 2016

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:51 a.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Amstutz, Asher, Clyde, Davidson, Mills, and Peterson in attendance.

#### **Approval of Minutes:**

The minutes of the May 12, 2016 meeting of the committee were approved.

#### **Committee Discussion:**

Chair Cole began the meeting by indicating that three reports and recommendations that had been issued by the committee at its last meeting were approved by the Coordinating Committee and would be forwarded to the Commission for a first reading.

Chair Cole then stated, with regard to the committee's review of Article VIII, Sections 4, 5, 6, that the state is involved in a lawsuit challenging the JobsOhio program that is related to those sections of the constitution. He said, in the interests of full disclosure, that, as a private practice attorney, he represents JobsOhio and is lead counsel.

Chair Cole further disclosed that attorney Gregory W. Stype, of Squire Patton Boggs (US) LLP, who is one of the presenters appearing before the committee, is also counsel for JobsOhio. Chair Cole said the legal representation does not prevent either attorney from presenting or participating, but, he said, the committee will want to be careful to hear all viewpoints on Article VIII, Sections 4, 5, and 6.

## **Presentations:**

*Gregory W. Stype*  
*Squire Patton Boggs (US) LLP*

Chair Cole introduced Mr. Stype, who represents the Ohio Public Facilities Commission (OPFC) as bond counsel. Chair Cole indicated Mr. Stype would be presenting to the committee on the topic of Article VIII, Sections 4, 5, and 6, related to the credit of the state, the assumption of debt by the state, and the prohibition against local governments becoming stockholders.

Mr. Stype began by noting that the core aspects of Sections 4 and 6 are the same: they limit the power of the state in Section 4, and limit the power of local governments in Section 6, to lend aid in credit or to become a joint actor with private enterprise. He said, in the 1851 constitution, those sections, as well as Section 5, sprung out of the troubled financial history of the railroads and canals. Mr. Stype noted that the version of Section 6 that is now in the constitution results from an amendment in 1912 to add the five lines that do not prohibit joining with insurance companies to insure property and risk. He said, while that provision seems unrelated, the logic becomes clear if it is considered that insurance was an evolving industry at that time and the language was believed necessary to protect that institution in the constitution.

Mr. Stype said Section 5, which restricts the state from assuming the debts of any political subdivision unless the debt was created for the purpose of addressing civil unrest, is often overlooked. He further noted the constitution does not stop with Sections 4, 5, and 6 in addressing lending aid in credit because express exceptions have been put in place.

Mr. Stype continued that, through action by voters or by the courts, the language has been illuminated and additional amendments have refined the meaning of the sections.

He noted that Section 13, adopted in 1965 and amended in 1975, allows the issuance of industrial development bonds and resulted from an Ohio Supreme Court ruling in 1964 that, even though a proposed test bond issue did not put any of the state's resources at risk, Section 4 precluded that kind of bond issue.<sup>1</sup> Thus, Section 13 provides that bonds can be issued and loans made for projects for industry, commerce, distribution, and research, with an important proviso that monies raised by taxation may not be obligated or pledged to the payment of those bonds. He said the amendment is designed to allow industrial development bond financing to convert federal tax benefits to the projects, but not to commit state tax dollars.

Chair Cole asked whether the state is viewed as a conduit or guarantor in that situation. Mr. Stype indicated that if the state is a guarantor, it can only do so from nontax revenue sources. He gave as an example that when the state made pledges of abandoned deposits that were collected by the Department of Commerce through its banking division. He added there are programs for loans being made and payments received back in circumstances where there is a large and predictable revenue stream that can be leveraged through bonds and loans made. He said an example of that type of program is the Ohio Turnpike. He said the turnpike tolls are not taxes,

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<sup>1</sup> *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E.2d 328 (1964).

and so that money is not a debt of the state, does not invoke the state taxing power, and all payments come from turnpike users.

Chair Cole asked Mr. Stype to provide an example of a project for which bonds are issued under Section 13. Mr. Stype said this option is used less frequently because federal tax law has become more constrained, but, he added, there are bonds that have federal tax benefits for air and water pollution control at private industrial facilities. He said those bonds are going to be repaid by those companies, but the bonds could not be issued absent Section 13.

Committee member Herb Asher asked, with regard to Section 4, whether universities can become co-owners with private sector entities. Mr. Stype answered that, as a general proposition, state universities are subject to the same restrictions as other state agencies, but structures have been created to allow projects such as making land available to build private residence halls. He said, generally, if a project is in the service of a public purpose and the state taxing power is not being exposed to risk, then a project has Section 13 ramifications.

Representative Ron Amstutz asked what category liquor sales profits fall into. Mr. Stype said those are out of the state's taxing power, as established by the Ohio Supreme Court in *State ex rel. Duerk v. Donahey*, 67 Ohio St.2d 216, 423 N.E.2d 429 (1981).

Mr. Stype continued his presentation by noting Section 14, adopted in 1982, authorized loans for housing in Ohio, an amendment that was driven by a 1976 Ohio Supreme Court decision concluding that, despite Section 13, the words "industry, commerce, distribution, and research" did not encompass housing. Thus, the Court said, if voters wanted to create that benefit the constitutional section specifically would need to indicate housing. *State ex rel. Brown v. Beard*, 48 Ohio St.2d 290, 358 N.E.2d 569 (1976).

Mr. Stype described Section 15, adopted in 1985, as authorizing the state to issue bonds to fund loans for coal research and development purposes, allowing the state to share in the returns from the bonds.

Mr. Stype said Section 16, adopted in 1990, broadened the loans-to-lenders regime that existed under Section 14, opening the door to a wider variety of housing loans.

Mr. Stype noted that, in 1993, Section 21 was adopted to authorize general obligation bonds for capital improvements for parks, land, and water recreational facilities. He said that section also says Sections 4 and 6 do not apply.

With regard to the adoption of Section 20 in 2000, he said in 2008 that provision was extended and enlarged in terms of its amount. He said that section authorizes issue of general obligation bonds for environmental and related conservation and revitalization purposes.

Chair Cole asked whether the state can become a joint owner. Mr. Stype said that would not be possible, but that the practice has been for the state to get the loan for the revitalization project and partner with local communities. He noted that owners of "brownfield" sites that require

revitalization cannot qualify for state assistance if they are the ones who created the dirty site; rather, it is the subsequent owner who qualifies for state assistance.

Chair Cole asked whether the state can participate in the profit stream, or whether the money is awarded as a grant. Mr. Stype said that type of assistance is primarily designed to provide grants, but there is also a limited amount of loans.

Rep. Amstutz asked, regarding Section 2o, whether there is an interpretation that the conservation provision could allow for some participation in some of the conservation practices that would prevent or curtail pollution, such as wastewater treatment. Mr. Stype said that might fall under Section 2o or under some other constitutional provision.

Mr. Stype noted the last set of exceptions to Sections 4, 5, and 6, are found in Section 2p, the “Third Frontier Amendments,” that were originally adopted in 2005, and extended in 2010. He said Third Frontier projects are those for which there is state authorization to issue general obligation bonds to fund research and development, and for sites and facilities for support of Ohio industry, commerce, research, distribution, and development. He noted “shovel ready sites” was the title that was used, meaning property that is ready and prepared for development. He said these moneys were invested in ways that allowed private industry to be part of the picture, so there had to be an exception to Sections 4 and 6. He said, with a couple of exceptions, all bond issues are subject to General Assembly authorization and are often subject to limitations in terms of the amount that can be issued in a given year, outstanding, or in total, or are subject to the five percent debt service limitation. So, he said, there are restrictions on these bonds.

Mr. Stype then reviewed case law relating to Sections 4, 5, and 6. He identified one case, *Grendell v. Ohio Environmental Protection Agency*, 146 Ohio App.3d 1, 764 N.E.2d 1067 (9th Dist. 2001), involving contracting for services, as one of the best cases for a history of Sections 4 and 6. In that case, the Ninth District Court of Appeals determined it was acceptable under Sections 4 and 6 for the state to contract with private vendors to implement an automobile e-check system, holding that hiring a private vendor is not same as joining together in enterprise.

Mr. Stype also indicated *State ex rel. Dickman v. Defenbacher*, 85 Ohio App. 398, 86 N.E.2d 65 (10<sup>th</sup> Dist. 1948), held the state can appropriate moneys out of the general fund, even where the state could not issue debt for that purpose. He said a current appropriation is not a long-term commitment of the state’s financial resources and not a debt. Regarding public purpose themes, he said, in 2006, another case examined the purpose of public education, while another case dealt with health care. *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148 (2006); *State ex rel. Taft v. Campanella*, 51 Ohio App.2d 237, 368 N.E.2d 76 (8<sup>th</sup> Dist. 1977). Mr. Stype described another case dealing with intergovernmental arrangements, *Bazell v. Cincinnati*, 13 Ohio St.2d 63, 233 N.E.2d 864 (1968), which related to a stadium construction project.

Mr. Stype said some cases recognize that if the goal is to accomplish a public purpose through nonprofit corporations, Sections 4 and 6 do not prevent those kinds of arrangements. Mr. Stype said an early case standing for that principle, in 1922, held the state could give money to

agricultural fairs. *State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 136 N.E. 217 (1922). He said a 1983 case involving housing for the homeless determined that it is appropriate for a political subdivision to contract with a nonprofit corporation to provide services to the inhabitants of the political subdivision that could be provided by the municipality itself as a public service. *Franklinton Coalition v. Open Shelter, Inc.*, 13 Ohio App. 3d 399, 469 N.E.2d 861 (10<sup>th</sup> Dist. 1983).

Mr. Stype identified only two cases interpreting Section 5: *Butler Cty. Transp. Improvement Dist. v. Tracy*, 120 Ohio App.3d 346, 697 N.E.2d 1089 (12<sup>th</sup> Dist. 1997), and *Long v. Ohio State University*, 24 Ohio App. 261, 157 N.E. 395 (10<sup>th</sup> Dist. 1926). In both cases, the Court upheld the financing arrangements as falling outside the prohibition created by Section 5.

Mr. Asher noted a state revenues program linked to a deposit program out of the state treasurer's office, wondering if that program required a special statutory or constitutional provision to allow the treasurer to do that or whether, instead, the treasurer has the power to make decisions to invest. Mr. Stype said that program was authorized by statute.

There being no further questions for Mr. Stype, Chair Cole thanked him for his presentation.

*Jonathan Azoff*  
*Director of Office of Debt Management and Senior Counsel*  
*Office of the Ohio Treasurer*

Chair Cole recognized Jonathan Azoff, director of the Office of Debt Management and Senior Counsel to the Ohio Treasurer of State. Mr. Azoff presented to the committee on the topic of a state constitutional provision giving the Ohio treasurer the responsibility of reporting on State debt.

Mr. Azoff said currently the treasurer's office fulfills three core functions relating to state debt. He said, first, the treasurer is the issuer of debt, specifically, the state's general obligation highway debt, its Grant Anticipation Revenue Vehicle (GARVEE) transportation bonds, and its lease-appropriation debt. He said the treasurer also serves as a conduit issuer for the state's federal and state infrastructure bank programs, the Ohio Enterprise Bond Program, and the Community College Intercept Program, as well as performing certain duties as a member of the OPFC in connection with OPFC issuances.

Mr. Azoff said, as a second core function, the treasurer's office ensures the timely payment of the state's approximately \$11 billion in outstanding debt, acting as paying agent and bond registrar for all general obligation debt and coordinating debt payments via corporate bond trustees for revenue and special obligation debt. He added that the treasurer's office calculates payments on state-issued swap agreements and evaluates remarketing agent performance on the State's outstanding variable rate obligations.

Mr. Azoff described the treasurer's third core function in relation to debt is to report on the state's debt.

In relation to constitutional provisions creating a sinking fund and a sinking fund commission, Mr. Azoff said there is significant overlap between the treasurer's debt-related duties and responsibilities delegated to the commissioners of the sinking fund. He noted, while the commissioners of the sinking fund have not met since 2008, the sinking fund commission's constitutionally-delegated duties are being performed. With regard to duties delegated to the treasurer, Mr. Azoff said for at least the last 47 years, the treasurer has prepared the semi-annual report, distributing it twice a year to the governor and all members of the General Assembly. He said the report details general obligation bond activity for the preceding six-month period, providing extensive financial information regarding the state's ten types of outstanding general obligation bonds.

In addition to that reporting function, Mr. Azoff described that the treasurer also fulfills the sinking fund commission's duty to pay interest and redeem the principal on the state's general obligation debt, and does so in the capacity of the "Commissioners of the Sinking Fund." He said the "Commissioners of the Sinking Fund" receive appropriations in every state operating budget for this purpose, noting that in fiscal year 2016, the "Commissioners of the Sinking Fund" were appropriated more than \$1.1 billion. He said the Office of Debt Management at the treasurer's office transacts business using these funds as the "Commissioners of the Sinking Fund" in the state's accounting system, timely paying the state's outstanding debt from the designated bond service funds.

Mr. Azoff emphasized the treasurer does not have independent legal authority to perform many of these tasks, relying instead on the legal framework set out in the constitution. He said if Article VIII, Sections 7 through 11 are repealed, a replacement will be required.

Mr. Azoff advocated for a constitutional amendment providing for the state treasurer to report on the state's debt. He said creating such an amendment would continue the historical tradition of the semi-annual report, and retain an important constitutional principle requiring publicly-elected officials to demonstrate accountability for the money the state borrows, which taxpayers are ultimately responsible to repay.

Mr. Azoff said the committee should not stop there but should also recommend an amendment that would expressly charge the treasurer's office with the responsibility for paying the state debt.

Mr. Azoff said the "archaic Commissioners of the Sinking Fund can be modernized without removing the Constitutional accountability for statewide elected officials that was put in place at the Constitutional Convention of 1851. There has not been testimony indicating that that safeguard is no longer necessary." Mr. Azoff concluded, saying it is important to continue the practice of holding statewide elected officials accountable in the constitution for the management, reporting, and payment of the state's debt.

Chair Cole asked where the treasurer's reporting function is reflected in the law and whether there is statutory authority for this function. Mr. Azoff said there is statutory authority that does not specifically reference the sinking fund but rather references the sinking fund commission.

Chair Cole said he thought the OPFC was doing many of the functions that had been assigned to the sinking fund commission. Mr. Azoff said, with regard to issuance of debt, the reporting on debt is prepared by the treasurer under the seal of the sinking fund commission, and there is a semiannual report prepared by the treasurer in the capacity of the office of the sinking fund.

Chair Cole asked what gives the treasurer the authority to do that if the sinking fund is not meeting. Mr. Azoff said the statute permits the sinking fund to issue the report, allowing appointment of a clerk, who is the treasurer.

Chair Cole asked if there is anything that would prevent the General Assembly from creating a statute to address this procedure. Mr. Azoff said there is not, but there is value in keeping the treasurer's role in the constitution. He added he is not aware of any statutory authority for preparing the report.

Committee member Fred Mills asked whether Mr. Azoff is suggesting that there should be independent authority in the constitution if the committee recommends elimination of sinking fund. He noted those functions should be given to the treasurer as an alternative, but wondered if that provision must be in the constitution.

Mr. Azoff said the overarching point is, if the sinking fund is out of date but the function is not, Ohio would be losing some safeguards.

#### **Discussion:**

With regard to addressing the sinking fund, Chair Cole noted that the committee already voted to issue a report and recommendation that the sinking fund provisions, Article VIII, Sections 7, 8, 9, 10, and 11, be repealed. He said that action does not prevent adopting a separate provision that constitutionally assigns the reporting duties to the treasurer or anyone else. Chair Cole said the committee should consider whether to move forward with formulating a new provision that would assign the duties currently assigned to the sinking fund commission and the treasurer to another government official.

Chair Cole said the committee is not yet in a position to discuss Sections 4, 5, and 6, so that discussion would be saved for another meeting.

Chair Cole said the benefit of the constitutional provisions relating to the sinking fund was that they required participation by the five statewide elected officials.

Committee member Jo Ann Davidson noted the reporting requirement could be in legislation rather than in the constitution. She said the issue is whether the committee needs to provide some way the reports can legitimately be made in the constitution or whether that function is subject to statute.

Chair Cole observed that, for the last 170 years, the reporting function was in the constitution. He said there is a potential for the possibility that if it is not in the constitution, there will be no statute assigning the reporting duty.

Mr. Asher said if the requirement is in the constitution, it gives it greater standing or sends a message to the public, but, on the other hand, requiring the treasurer to issue a report sounds more like a statutory issue. He said it might be important to have flexibility to change the requirement, which is easier if it is statutory.

Ms. Davidson noted the OPFC is doing some of this task, and the OPFC is subject to statutory change, suggesting that it makes more sense to her to marry those two together, rather than to put one provision in the constitution and the other not.

Chair Cole said one benefit is that the sinking fund provision requires the statewide officeholders to participate. He said there is no reason the General Assembly could not fix that in the statute.

Mr. Azoff noted payment on the debt function is enshrined in the constitution, and is done by the treasurer.

Chair Cole asked what role the OPFC plays. Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), who was present in the audience, answered that OBM coordinates with the treasurer's office. He said OBM is the staff for the OPFC, and aligns the debt service payments.

Chair Cole asked Mr. Kauffman if OBM has a view on whether issuance, reporting, and payment functions should be in the constitution. Mr. Kauffman said, on the issuance side, OBM has benefited from the flexibility in the current constitutional approach. He said, on the reporting side, OBM Director Timothy Keen asked that the committee consider whether reporting should be in the constitution, agrees the treasurer is the appropriate entity, and would also support a legislative solution to that. He said, regarding the payment function, the view is that role is not worthy of a constitutional provision but rather is administrative and would be better left to statute.

Chair Cole asked whether all three functions should be in the constitution.

Mr. Azoff said his proposal reflects the treasurer's view that, in terms of priority, it seems the two functions would represent a change from constitutional tradition, and there is no need to make a wholesale change.

Mr. Asher asked how other states approach issuance, reporting, and payment functions, wondering whether they approach it constitutionally. Shari L. O'Neill, counsel to the Commission, noted that research was provided to the committee regarding other states' constitutional provisions relating to the duties of the treasurer. Chair Cole agreed that information would be useful, but asked that it be supplemented by research indicating states that address the treasurer's role by statute, and comparing the constitutional versus the statutory approach. Staff agreed that this research would be provided to the committee at a future meeting.

Chair Cole announced at its next meeting the committee would talk further about Sections 4, 5, and 6, as well as considering the role of the treasurer and whether that should be reflected in a constitutional provision.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:59 p.m.

**Approval:**

The minutes of the June 9, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the November 10, 2016 meeting of the committee.

*/s/ Douglas R. Cole*  
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Douglas R. Cole, Chair

*/s/ Karla L. Bell*  
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Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, NOVEMBER 10, 2016

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:38 a.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Amstutz, Davidson, Mills, Peterson, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the June 9, 2016 meeting of the committee were approved.

#### **Presentations:**

*Steven C. Hollon, Executive Director*  
*Update on Draft Joint Resolutions*

Chair Cole recognized Steven C. Hollon, executive director, for purposes of updating the committee on the preparation and introduction in the General Assembly of joint resolutions relating to reports and recommendations issued by the committee.

Mr. Hollon directed committee members to a copy of the joint resolution language prepared by the Legislative Service Commission.

He described House Joint Resolution number 11 as proposing to amend Article VIII Section 2, and repeal Sections 7, 8, 9, 10, and 11, and to adopt the recommendation of the Commission related to the Sinking Fund. Mr. Hollon said the joint resolution is being sponsored by Commission members Representative Ron Amstutz and Representative Michael Curtin.

Mr. Hollon said House Joint Resolution number 10 proposes to enact Article VIII, Section 18, repeal Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, and adopt the Commission's recommendation regarding obsolete bonding authority.

Mr. Hollon continued that House Joint Resolution number 9 proposes to enact Article VIII, Section 2t, and to adopt the Commission's recommendation relative to the creation of general obligation debt.

Mr. Hollon said the effort to bring forward joint resolutions related to these reports and recommendations was raised and discussed at the full Commission meeting in October 2016. He said Rep. Curtin and Rep. Amstutz had advocated in favor of introducing joint resolutions, and so had the drafts prepared and will sponsor the joint resolutions in the House. Mr. Hollon noted he would be announcing this development to the full Commission as well.

Chair Cole then invited the committee to ask any questions. Senator Charleta Tavares asked whether companion joint resolutions should be introduced in the Senate.

Rep. Amstutz said the view from the House is that it was important to get the discussion started because there are not very many session days left in the current General Assembly. He said he would like the Senate to begin a review of the recommendations as well, but it will be up to the Senate to introduce joint resolutions. He said he is not sure how much attention the legislation will get because of other business, but that he and Rep. Curtin are resolved to do their best to bring attention to the joint resolutions.

Chair Cole said he thought the term "joint resolution" meant both houses were proposing the amendment. Rep. Amstutz said, ultimately, the proposal will be joint if both houses act on it, but that a joint resolution is not automatically introduced in both houses.

Chair Cole clarified that there is no current Senate sponsor, to which Sen. Tavares said she would like to move forward on this in the Senate but needs a co-sponsor. Sen. Bob Peterson volunteered to co-sponsor the joint resolution with Sen. Tavares.

There being no further comments or questions, Chair Cole thanked Mr. Hollon for his presentation.

*Steven H. Steinglass, Senior Policy Advisor  
Review of State Policies on General Obligation Debt*

Chair Cole then recognized Senior Policy Advisor Steven H. Steinglass for the purpose of presenting a memorandum on the topic of state policies on general obligation debt. Mr. Steinglass said the memorandum provides a national overview as to how other states deal with general obligation debt, if at all. He said the topic arose indirectly when Professor Richard Briffault presented to the committee at a previous meeting. Mr. Steinglass acknowledged the work of intern Alex Benson, 2016 graduate of the Ohio State University Moritz College of Law, who prepared research materials in aid of the project.

Mr. Steinglass said the memorandum is organized to identify four different approaches that states have. He said some, like Ohio, only allow general obligation debt if there is an amendment to the constitution, either because the constitution has a prohibition on debt or because it has a low debt limit. He said some states have legislative approval before presenting the question to voters, some states only require legislative approval, and some states have no constitutional debt limit and leave it to the legislature.

He said the most interesting thing involves changes that have occurred since 1970. At that time, the Constitutional Revision Commission finance committee proposed to take the constitutional amendment out of the debt raising business and let the legislature do it, subject to the floating limitation on principal and interest. But, he said, this proposal was rejected by voters. He continued that, for the last 40 years, there has been an interesting movement around the country. He said, in the beginning, 16 states required amendments to their constitutions to incur general obligation debt, by a variety of ways. Now there are only 9 states that do so, including Ohio. He said the movement is that states have been saying they do not want to encumber their constitutions with 1,000 word amendments incurring general obligation debt. He noted that no states have moved in the other direction.

Mr. Steinglass said the largest split among the states that do not require the involvement of the constitution is how far they will go without voter participation. Eighteen states require legislative action and voter approval. Two additional states require legislative supermajority action. Nine require legislative action without any voter approval. Six states require a legislative supermajority without voter approval. And, he said, six have no constitutional debt limitations. Nearly 15 states do not require either supermajority or a vote of the people, according to Mr. Steinglass.

Mr. Steinglass commented that Ohio has a prohibition on general obligation debt. Beginning with World War I bonds, which ignored the limitation, that state of affairs has been the trend ever since. He said Article VIII is the most frequently amended article of the constitution.

He said the committee, having now confronted the problem of large numbers of obsolete provisions that need removal, may wish to decide whether to continue with that model and in another 20 years take out more obsolete provisions. He said another way is to say these provisions do not need to be in the constitution. He said there is a threshold decision of whether to maintain the status quo or find a way to raise general obligation debt without employing an amendment to the constitution. He noted the Office of Budget and Management Director Timothy Keen expressed disfavor with making that kind of change.

Mr. Steinglass having concluded his remarks, Chair Cole asked committee members if they had questions or comments.

Vice-chair Karla Bell asked whether the 1970s Commission had recommended eliminating the requirement for voter approval. Mr. Steinglass answered there was no specific approval of general obligation debt called for in the 1970s Commission proposal. Instead, he said, the proposal was for a debt repayment limitation of six percent of the average revenues of the state, so the goal was to keep the legislature in line.

Chair Cole noted a previous suggestion by Commission member Charles Kurfess that it might be useful to explore whether there could be some ongoing fix in the form of not requiring constitutional amendments. Chair Cole said he discussed that idea with Gregory Stype, bond counsel with Squire Patton Boggs (US) LLP, who said there are considerations that support leaving some amendments in place. Chair Cole asked Mr. Stype, who was present in the audience, to explain that concern.

Mr. Stype said many general obligation debt amendments do more than authorize the debt; they also provide program implementation and credit restrictions, and empower activities of local governments. He said it is important to see the amendments for more than simply an authorization of debt.

Mr. Stype added that it is possible to add a line to a constitutional amendment enacting a new section that would repeal an obsolete section. He said that is one way of cleaning up obsolete amendments. He described that there have been many amendments to Article VIII, and at the beginning the practice was to authorize a set amount of debt that may be issued, after which the provision is no longer effective. He said the more modern practice is to have the amendment authorize debt for a specific purpose, either in an amount authorized by the General Assembly or as a rolling limit. He said he would guess that the frequency of amendments through bond issues has tapered off over time because the state has taken an approach that does not have an absolute dollar limit.

Chair Cole said this may be a historical artifact, so that the state is not likely to see the problem continue. Thanking Mr. Steinglass for his presentation, Chair Cole asked to pass along the committee's thanks to Alex Benson for providing the research materials.

### **Report and Recommendation:**

*Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s  
(Additional Authorization of Debt Obligation)*

Chair Cole called on Mr. Hollon to provide a presentation on a report and recommendation for retaining Article VIII, Sections 2l through 2s in their present form.

Mr. Hollon said the report and recommendation indicates that Article VIII deals with public debt and public works. He said the report and recommendation provides the background of the sections, describing how the state adopted additional constitutional amendments in Section 2. He noted that Sections 2l through 2s involve bonds that have not been fully issued and paid off. Mr. Hollon then described the purpose and function of each of the sections.

Mr. Hollon said one paragraph would be added to the final draft, relating to Section 2p. He explained that Section 2p, adopted in 2005, authorizes the issuance of bonds for education and local government projects, specifically capital improvements to infrastructure, research and development, and, as amended in 2010, support for Third Frontier projects. He said because the committee will not be recommending a change to that section it needs to be a part of the report and recommendation and will be included.

After describing the report and recommendation's discussion of litigation related to the sections, as well as presentations and resources considered, Mr. Hollon indicated the report and recommendation concludes that the sections should remain in their present form. Finally, he noted that, because the committee is recommending no change, it has the option to issue the report and recommendation after only one presentation.

Mr. Hollon additionally commented that the proposed language for 2p has been vetted by some experts who have been assisting the committee, and they have approved the report and recommendation's treatment of that issue.

Chair Cole then asked for comment from the committee. Sen. Tavares asked, regarding Mr. Stype's suggestion for language that could be added to automatically retire obsolete debt provisions, if the committee is interested in adding that language.

Chair Cole said the committee would need to look at those provisions, and that it may be a situation where the section would not be obsolete because other provisions rely on keeping the section.

Mr. Stype clarified his previous statement, saying most sections are ongoing. He said his suggestion was not that there be standing language in the constitution, but rather that each time the General Assembly considers putting another authorization on the ballot it could consider if something is obsolete and add a sentence to repeal at the same time.

There being no further questions, Chair Cole said he would recommend to the committee that the report and recommendation be approved as amended to include Section 2p, without a second presentation.

Committee member Kathleen Trafford so moved, with committee member Jo Ann Davidson seconding the motion. A roll call vote was taken, and the motion passed by unanimous vote.

Chair Cole said he will leave it to Mr. Hollon to make the change to the report and recommendation to include Section 2p, and then forward it to the Coordinating Committee and then to the Commission.

### **Discussion:**

Chair Cole then directed the committee's attention to a memorandum relating to the question of whether there should be a new constitutional provision that would describe the duties of the state treasurer.

Mr. Hollon said this was an idea raised by Director Keen, and would involve a constitutional provision that would give the treasurer specific duties regarding reporting debt. He said one question is whether the issue is one for this committee or whether it would be better placed with the Legislative Branch and Executive Branch Committee to consider in the course of addressing Article III (The Executive Branch).

Committee member Fred Mills, who is chair of the Legislative Branch and Executive Branch Committee, expressed that this committee ought to review it in depth, and, if there is a recommendation to adopt a provision of this nature, the question could be sent to the Legislative Branch and Executive Branch Committee.

Chair Cole said he would like to give the treasurer's office the opportunity to comment, asking whether the memorandum on the question has been provided to the treasurer.

Mr. Hollon explained this concept was discussed at previous committee meetings, and the memorandum was prepared in anticipation of a meeting two months ago that was canceled. Thus, he said, it has not yet been provided to the treasurer.

Chair Cole said the question is whether, if the committee is striking the Sinking Fund and eliminating the Sinking Fund Commission, it should replace that with a constitutional reporting obligation regarding state debt.

Chair Cole recognized Larry Scurlock, assistant debt manager for the Office of Budget and Management, who was in the audience. Mr. Scurlock indicated that the treasurer of state issues a report on behalf of the Sinking Fund as set out in Article VIII, Section 11.

Chair Cole continued that, to the extent that the committee believes that the reporting function has value, it should determine whether to leave it to the legislature to create that function by statute. He said the committee may think action by the General Assembly should not be discretionary.

Ms. Trafford said it would be worthwhile to share this memorandum with the treasurer's office and hear from them. She said if the voters will be asked to repeal the Sinking Fund, constitutionalizing the treasurer's duty might be a good addition to give the public the comfort that the debt reporting duty would continue.

Chair Cole said the memorandum should be sent to the treasurer's office, requesting the treasurer's view on whether reporting obligations should be assigned to the treasurer and whether that should occur through statute or through the constitution. He said it would be useful to invite someone from the treasurer's office to appear and comment at the next meeting.

Ms. Trafford suggested that, if the sinking fund is being eliminated, the committee should offer other members of the Sinking Fund Commission to consider the question and provide comment.

Chair Cole agreed, saying it would be nice to have a view as to the desirability of the idea from the Office of Budget and Management. He requested that Mr. Hollon extend invitations to that office, as well as to the governor, attorney general, and auditor.

Chair Cole then turned to the topic of Article VIII, Sections 4, 5, and 6. He disclosed that, in his role as a private attorney, he represents JobsOhio. He said these are provisions that deal with limitations on the government's ability to engage in joint enterprise with private entities.

He continued that the committee has heard from Mr. Stype about those sections, and about some exceptions that exist in other constitutional provisions. He said there is some recent jurisprudence regarding Sections 4 through 6. He emphasized that, unlike some of the other sections where the committee was mostly dealing with obsolete provisions, there is an ongoing debate with various viewpoints regarding the understanding of Sections 4, 5, and 6. He said the committee may want to consider the extent to which it wants to clarify this language. Chair Cole encouraged the committee to invite persons with viewpoints to share to come forward. He said the committee does not want to foreclose anyone from presenting their views on this topic.

Ms. Bell suggested to Chair Cole that, because he is actively involved in the JobsOhio representation, he might be in a position to identify potential speakers. Chair Cole agreed and said he would work with Mr. Hollon on that effort. He also encouraged the legislative members on the committee to suggest persons who have been witnesses in the General Assembly legislative process and may wish to present to the committee.

Chair Cole said the committee would be taking up that question at its next meeting in the new year.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:31 p.m.

**Approval:**

The minutes of the November 10, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the April 13, 2017 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, APRIL 13, 2017

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 2:29 p.m.

#### **Members Present:**

A quorum was present with Chair Cole and committee members Asher, Clyde, Davidson, Dever, Mills, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the November 10, 2016 meeting of the committee were approved.

#### **Discussion:**

Chair Cole announced that an issue for the committee to determine is whether to recommend a new constitutional provision that would assign debt reporting functions to the treasurer. He said because the committee has recommended the repeal of the sinking fund provisions, specifically the requirement there be a sinking fund commission charged with the responsibility of providing a report regarding state debt, there may be a consensus that a new provision constitutionalizing the role of the treasurer in providing the report. He said the treasurer's office has recommended such a provision, with the Office of Budget and Management (OBM) agreeing that there may be a need for a modernized provision assigning debt reporting functions to the treasurer.

Committee member Jo Ann Davidson commented that Ohio has had a strong reputation for managing its debt well, adding it would be better to deal with the debt reporting duty in a constitutional amendment rather than by statute. She said she would support a constitutional amendment assigning that role, but that the provision should include more detailed requirements regarding what needs to be reported in order to be sure the public has access to all of the relevant

issues. As a model, she said the committee could refer to suggestions by OBM Director Tim Keen.

Committee member Kathleen Trafford said a constitutional provision would provide a comfort level since the committee has recommended getting rid of the sinking fund.

Committee member Herb Asher agreed, saying the issue of public debt rises to the constitutional level.

Ms. Davidson noted that there are other restrictions in the constitution based on the level of debt, cautioning if the provision is not specific enough it could be misinterpreted.

Chair Cole asked whether anyone on the committee opposed the concept of proposing constitutional language that would create a debt-reporting role for the treasurer, and there were no objections. He then asked staff to assist in drafting proposed language for the committee's next meeting that would constitutionalize the debt reporting functions for the state treasurer, as opposed to the process outlined in Article VIII, Sections 7 through 11.

Chair Cole then turned the committee's attention to possible next steps for consideration, indicating that the committee had not resolved what to do with Article VIII, Sections 4, 5, and 6. He said Sections 4 and 5 prohibit the state from giving credit to or assuming debt from private corporations, while Section 6 prohibits political subdivisions from joint stock ownership, lending in credit, in relation to private corporations.

Reiterating that he has provided legal representation to JobsOhio in the past, he asked whether the committee would like to review Sections 4, 5, and 6, indicating there is a large body of case law built up around those provisions, and that the committee could take on task of rebalancing that. He said, if so, a first step would be to identify problems with the current structure, and the committee could hear from representatives of Progress Ohio in relation to litigation against JobsOhio. He said the topic is complex and would take some time.

Ms. Trafford asked whether anyone is aware that state officials, or the Municipal League has expressed a problem with those provisions. Chair Cole said he has reached out to see if anyone in state government wants to present to the committee, but has not had success in identifying anyone. He noted an early presentation to the committee from the Port Authority, saying he is not sure if that organization has a view or recommendation.

Ms. Davidson said she recalled the Port Authority had recommended a system that would provide it with more flexibility, allowing it to expand its activities.

Ms. Trafford said the Port Authority concern falls in the economic development area, where this constraint would be most felt. She said Article VIII, Section 13 exempts programs from the operation of Sections 4 and 6. Chair Cole asked staff to locate and provide that previous testimony for the committee's review. He continued that the committee has not addressed Section 13 either, offering to arrange for a speaker in relation to the operation of Sections 4, 6, and 13. He said this would allow the committee to make a recommendation based on

information. He suggested Greg Stype, state bond counsel who spoke to the committee on previous occasions, might be able to speak to this issue.

Chair Cole said this topic would wrap up the committee's work on Article VIII, and asked what the committee's views were on considering Article XII, regarding finance and taxation, and Article XIII, regarding corporations. He said the committee's homework would be to review the articles and consider speakers who might like to talk to the committee about issues raised by those sections. He commented that he has not heard from anyone with potential changes to those articles.

Ms. Trafford noted that Sections 14 through 17 of Article VIII may not be necessary. Chair Cole said Section 17 is the debt limit, while Sections 14 and 15 relate to housing. He said the committee may need a recommendation regarding those sections. He asked staff to prepare a brief memorandum reviewing the committee's prior work on the various sections and topics so that the committee will be able to review the status of its work at the next meeting.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 2:51 p.m.

**Approval:**

The minutes of the April 13, 2017 meeting of the Finance, Taxation, and Economic Development Committee were approved at the May 11, 2017 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 11, 2017

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:05 a.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Asher, Clyde, Davidson, Dever, Mills, Peterson, and Trafford in attendance.

#### **Approval of Minutes:**

The minutes of the April 13, 2017 meeting of the committee were approved.

#### **Discussion:**

##### *A Debt Reporting Role for the State Treasurer*

Chair Cole raised whether the committee would like to make any informal recommendations regarding the remaining sections of the constitution assigned to the committee.

Regarding a reporting role for the treasurer of state, Chair Cole asked whether there is a sense of the committee regarding the constitutionalizing of debt reporting functions.

Committee member Kathleen Trafford said she believes the committee should note to the Commission that the debt reporting function should be contained within the constitution.

Committee member Jo Ann Davidson noted the ambivalence of the Office of Budget and Management toward having a constitutional reporting function. Chair Cole recalled the opinion of the treasurer's office that a constitutional provision would be preferable.

Committee members generally agreed to the importance of having a debt reporting provision, but there was no strong opinion as to whether it should be a statutory or constitutional provision. Committee member Fred Mills expressed a preference for the provision to be constitutional, but said he would support the general sense of the committee.

Chair Cole proposed a committee statement that a debt reporting function should be taken up as an important topic for assignment to the treasurer with no preference as to whether it should be statutory or constitutional.

The committee supported Chair Cole's proposal, with a motion by Vice-chair Karla Bell, and a second by Ms. Trafford seconded to request Chair Cole to craft language to pass to the Commission reflecting the committee's proposal.

#### *State Debt and Economic Development*

Chair Cole asked for the committee's views on how to proceed with the constitutional sections on state debt for economic development.

Ms. Trafford expressed concern regarding the complexity of the provisions, saying she thinks it best not to make a recommendation at this time.

Committee member Herb Asher suggested creating a narrative or history of the provisions and issues discussed by the committee, so that discussions by future groups can benefit from the committee's work. However, he said, such a report should not contain a particular recommendation.

Ms. Davidson agreed that the issue is complicated, and pointed out that prior testimony is already part of the record. She said creating a new overview would perhaps be too much work for staff.

Ms. Bell suggested a simplified summary listing who testified and when, allowing future reviewers to know where to look in the committee record for more details.

Mr. Asher agreed a summary list of the resources would be a reasonable approach.

Chair Cole requested staff to prepare a more summarized version of the state debt and economic development than appears in a May 11 memorandum, including a simplified listing of who testified and when.

#### *Tax Credit Proposal*

Referencing a tax credit proposal outlined in the May 11 memorandum, Chair Cole requested the committee's views as to whether to recommend this past language recommended by a witness. The committee expressed no interest, and so passed on recommending anything on this topic.

*Corporations*

Similarly, the committee did not express interest in making a recommendation on this topic.

There being no further comments or discussion, Chair Cole offered thanks to the committee members for providing their time and expertise. Senator Bob Peterson also offered thanks to the public members of the committee for their service to the Commission.

Mr. Asher thanked Chair Cole for his leadership.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 10:26 a.m.

**Approval:**

The minutes of the May 11, 2017 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 8, 2017 meeting of the full Commission.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair

# **Appendix 3**

## **Finance, Taxation, and Economic Development Committee**

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### **Status of Assigned Constitution Sections**

## **Status of Assigned Constitution Sections**

When Commission created its subject matter committees, it charged each committee with the responsibility for reviewing certain assigned sections of the Ohio Constitution. In turn, each committee maintained a planning worksheet to track its progress in addressing each of its assigned sections. The following document is the final planning worksheet for this committee. It indicates all of the sections for which the committee was responsible and the final status of its reports on those sections. The status is based on the approval steps required in the OCMC Rules of Procedure and Conduct.

The status categories indicated on the worksheet are as follows:

Draft Status	The current status of a draft report & recommendation
Committee 1 <sup>st</sup> Pres.	First presentation to the committee of the draft report & recommendation
Committee 2 <sup>nd</sup> Pres.	Second presentation to the committee
Committee Approval	Approval by the committee of the report & recommendation
CC Approval	Approval by the Coordinating Committee
OCMC 1 <sup>st</sup> Pres.	First presentation to the Commission
OCMC 2 <sup>nd</sup> Pres.	Second presentation to the Commission
OCMC Approved	Adopted by the Commission

## Finance, Taxation, and Economic Development Committee

### Planning Worksheet (Through June 2017 Meetings)

#### Article VIII – Public Debt and Public Works

##### Sec. 1 – Public debt; limit of deficit spending by state (1851)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

##### Sec. 2 – State may incur debts for defense or to retire outstanding debts (1851)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

##### Sec. 2b – Adjusted compensation for service in World War II; World War II veterans’ bonuses (1947)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

##### Sec. 2c – Construction of state highway system (1953)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2d – Korean War veterans’ bonus (1956)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2e – Providing means for securing funds for highway and public building construction (1955)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2f – Authorizing bond issue to provide school classrooms, support for universities, for recreation and conservation and for state buildings (1963)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2g – Authorizing bond issue or other obligations for highway construction (1964)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2h – Bond issue for state development (1965)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2i – Capital improvement bonds (1968)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2j – Vietnam conflict compensation fund (1973)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2k – Issuance of bonds for local government public infrastructure capital improvements (1987)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2l – Parks, recreation, and natural resources project capital improvements (1993)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2m – Issuance of general obligations (1995)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2n – Facilities for system of common schools (1999)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2o – Issuance of bonds and other obligations for environmental conservation and revitalization purposes (2000)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2p – Issuance of bonds for economic and educational purposes and local government projects ((2005, 2010)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2q – Issuance of bonds for continuation of environmental revitalization and conservation (2008)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2r – Persian Gulf, Afghanistan, and Iraq conflicts compensation fund (2009)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Sec. 2s – Issuance of bonds for municipal and county roads, bridges, waste water treatment (2014)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>11.10.16</b>	<b>N/A</b>	<b>11.10.16</b>	<b>12.15.16</b>	<b>12.15.16</b>	<b>3.9.17</b>	<b>3.9.17</b>

Proposed Sec. 2t – Issuance of bonds for mental health and developmental disabilities (____)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 3 – The state to create no other debt; exceptions (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 4 – Credit of state; the state shall not become joint owner or stockholder (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 5 – No assumption of debts by the state (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 6 – Counties, cities, towns, or townships, not authorized to become stockholders, etc.; insurance, etc. (1851, am. 1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 7 – Sinking fund (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 8 – The commissioners of the sinking fund (1851, am. 1947)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 9 – Biennial report of the sinking fund commissioners (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 10 – Application of sinking fund (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 11 – Semiannual report of sinking fund commissioners (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 13 – Economic development (1965, am. 1974)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 14 – Financing for housing program (1982)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 15 – State assistance to development of coal technology (1985)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 16 – State and political subdivisions to provide housing for individuals (1990)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 17 – Limitations on obligations state may issue (1999)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Proposed Sec. 18 – Outstanding debt or obligation remains in full force and effect (____)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

**Article XII – Finance and Taxation**

Sec. 1 – Poll taxes prohibited (1851, am. 1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 2 – Limitation on tax rate; exemption (1851, am. 1906, 1912, 1918, 1929, 1933, 1970, 1974, 1990)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 2a – Authority to classify real estate for taxation; procedures (1980)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 3 – Imposition of taxes (1976)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 4 – Revenue to pay expenses and retire debts (1851, am. 1976)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 5 – Levying of taxes (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 5a – Use of motor vehicle license and fuel taxes restricted (1947)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 6 – No debt for internal improvement (1851, am. 1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 9 – Apportionment of income, estate, and inheritance taxes (1912, am. 1930, 1976)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 11 – Sinking fund (1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 13 – Wholesale taxes on foods (1994)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

## Article XIII - Corporations

### Sec. 1 – Special acts conferring corporate powers; prohibited (1851)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

### Sec. 2 – Corporations, how formed (1851, am. 1912)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

### Sec. 3 – Liability of stockholders for unpaid subscriptions; dues from corporations; how secured; inspection of private banks (1851, am. 1903, 1912, 1937)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

### Sec. 4 – Corporate property subject to taxation (1851)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 5 – Corporate power of eminent domain to obtain rights of way; procedure; jury trial (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 6 – Organization of cities, etc. (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 7 – Acts authorizing associations with banking powers; referendum (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved